

OBSERVATIONS
UPON THE
STATUTE
OF

22 CAR. II. Cap. i.

Entituled, *VM*

An ACT to Prevent
and Suppress Seditious
Conventicles.

By Sir *Edmund Saunders*, Kt.
late Lord Chief Justice of
England.

L O N D O N,

Printed for *Tho. Dring*, at the Corner
of *Chancery-Lane* in *Fleetstreet*. 1685.

2



TO THE
Reader.

TO Recommend this
small Treatise to thy
perusal, there needs no more
then the Title with the
Authour's Name, whose
Loyalty, Integrity, and
profound Learning in all

A 3 the

To the Reader.

the Laws of this Realm,
were so eminent and
conspicuous both while
he was at the Bar, and
after his deserved ad-
vancement to the Bench,
that 'twould be imper-
tinent to tell thee what
a Reverence was al-
ways paid to his Opini-
ons; His Memory is so
fresh, that I cannot sup-
pose thee ignorant of the
same, or void of a pro-
found

found respect to his ve-
ry name, for the con-
tinuance of which, this
Manual is published, as
also for the publick good
of the Realm, which
was his end in its Compo-
sition; the immediate oc-
casion of writing these
Observations was to gra-
tify the Requests of di-
vers of his Majesty's
Justices of the Peace for
the County of Middle-

To the Reader.

sex, who desired his
Opinion in sundry points
upon this Statute for the
better Government of
themselves in the Exe-
cution hereof with safe-
ty from the malicious
Suits of the Dissen-
ting Party, who were,
and always are ready
to take advantage of the
least slip or mistake of
any of the King's Offi-
cers of the Peace. The
Lord

To the Reader.

Lord Saunders being sensible thereof, as likewise of the great use of this Law, and the necessity of its Prosecution in order to preserve the publick Peace and Quiet of the Kingdom, did write this Explanation of it even while he was Lord Chief Justice of England, it being all of his own Hand-writing, so far
as

To the Reader.

on page 79. where you
will see the Additionals
printed with this
mark before them : The
great multiplicity of busi-
ness in his Place, and
the unhappy indisposi-
tion of his Body did
prevent the completion
thereof, he often wish-
ing for but a few hours
time to perfect it ; For
the residue, as it had
not the same Author,
so

To the Reader.

so neither doth it expect the same Authority, it being added as an Essay to supply what was left undone, and yet the supplement may be not without its use, being made as near as possible to the Lord Saunders's sense in other Paragraphs, and according to his Method and Rule are the Constructions made even in such

To the Reader.

Inch manner as may
most 'advance' the Re-
medy, and suppress the
Mischief intended by
this Law, and are most-
ly groundd upon appro-
ved Opinions and Re-
solutions of the Judg-
es on this Law, and
other Laws of this Na-
ture. For the Subject,
'tis well known that this
Act never received a-
ny publick Animadver-
sions,

To the Reader.

sions , and yet doth
perhaps need an Expla-
nation as much as those
against Recusancy , on
which there have been
Observations made and
Printed , and not with-
out Approbation. For the
seasonableness of this
Publication, there needs
no other Apology than
what the Age we live,
and the Book it self do
bespeak, and if it may
prove

To the Reader.

prove any way serviceable to the Publick, by being helpfull to the Justices and other Officers of the King's Peace, the Reverend Author's Design, as well as that of the Publisher will both be accomplished.

Some

Some Books Printed for Thomas Dring over against the Inner-Temple Gate in Fleet-street.

Law, in Folio.

THE Statutes at large, from *Magna Charta*, to this present year 1682. in Paragraphs and Sections, with References to the Books of the Law, and an exact Table: By *Joseph Kettle* of *Grays-Inn Esq;* in folio.

Kobles Assistance to Justices of the Peace for the easier performance of their Duties.

Collection Entries, &c. By *William Rastall*; fol.

The Lord *Cokes* Book of Entries.

—His Commentary on *Littleton*, being the first part of the *Institutes*.

—His Commentary on *Magna Charta*, &c. or the second Part of the *Institutes*.

—His Pleas of the Crown, or third Part of the *Institutes*.

—His Jurisdiction of Courts, or fourth Part of the *Institutes*.

—His

A Catalogue of Books.

—His 11 Reports in *French*, with a Table, and the twelfth and thirteenth in *English*.

An Abridgment of Cases, and Resolution of Law, contained as well in the Law-Books, Statutes and Records, as of modern Judgments in the Courts of *Westminster*. By *H. Roll*, Serjeant at Law: Published by the Lord Chief Justice *Hales*.

The Year Books, in 10 Volumes, the last Edition, with new Notes and Tables to them all.

Origines Juridicales; or an Account of the *English* Laws, Courts of Justice, Forms of Tryal, Punishment in Cases Criminal, Law-Writers, Law-Books, Grants and Settlements of Estates, &c. Also a Chronology of the Lord Chancellors, Keepers, Treasurers, Justices Itinerant, Judges, Barons, Masters of the Rolls, Kings Attorneys, and Solicitors and Serjeants at Law. By Sir *William Dugdale* Knight.

Tables to most of the printed Proficients of Pleadings, Writs and Return of Writs at the Common-Law. Collected by *George Townsend*.

Anno



Anno XXII.

Caroli II. Regis.

An Act to Prevent and Suppress
Seditious Conventicles.

FOR Providing farther and more speedy Remedies against the growing and dangerous Practices of Seditious Sectaries, and other Disloyal Persons, who under pretence of tender Consciences, have or may at their Meetings Contrive Insurrections, (as late Experience hath shewn) Be it Enacted by the
a Kings

Kings most Excellent Majesty,
by and with the Advice and Con-
sent of the Lords Spiritual
and Temporal, and Commons
in this present Parliament As-
sembled, and by Authority of
the same, That if any Person
of the age of Sixteen years or
upwards, being a Subject of
this Realm, at any time after
the tenth day of May next, shall
be present at any Assembly, Con-
venticle or Meeting under Co-
lour or Pretence of any Exer-
cise of Religion, in other man-
ner than according to the Church
of England, in any place with-
in the Kingdom of England,
Dominion of Wales, or Town
of Berwick upon Tweed, at
which Conventicle, Meeting, or
Assembly, there shall be five
Persons or more assembled to-
gether, over and besides those
of the same Household, if it be
in a House where there is a fa-
mily

mily Inhabiting, or if it be in
 a House, Field, or Place where
 there is no Family Inhabiting:
 Then where any five Persons
 or more, are so Assembled as
 aforesaid, It shall and may be
 lawfull to and for any one or
 more Justices of the Peace of
 the County, Limit, Division,
 Corporation or Liberty, where-
 in the Offence aforesaid shall be
 committed, or for the chief Ma-
 gistrate of the Place where such
 Offence aforesaid shall be com-
 mitted: And he and they are
 hereby Required and Enjoyned,
 upon Proof to him or them re-
 spectively made of such Offence,
 either by Confession of the Par-
 ty, or Oath of Two Witnesses
 (which Oath the said Justice
 and Justices of the Peace, and
 Chief Magistrate respectively,
 are hereby Impowered and Re-
 quired to Administer) or by no-
 torious Evidence and Circum-
 stance

stance of the Fact, to make a Record of every such Offence under his or their Hands and Seals respectively; which Record so made as aforesaid, shall to all intents and purposes be in Law taken and adjudged to be a full and perfect Conviction of every such Offender for such Offence; and thereupon the said Justice, Justices and chief Magistrate respectively, shall impose on every such Offender so convicted as aforesaid, a Fine of Five shillings for such first offence, which Record and Conviction shall be certified by the said Justice, Justices or chief Magistrate at the next Quarter Sessions of the Peace, for the County or place where the Offence was committed.

And be it farther Enacted by the Authority aforesaid, That if such Offender so Convicted as aforesaid, shall at any time again

gain commit the like Offence or Offences, contrary to this Act, and be thereof in manner aforesaid Convicted; Then such Offender so convicted of such like offence or offences, shall for every such offence incur the Penalty of Ten Shillings, which Fine and Fines, for the first and every other offence, shall be levied by Distress and sale of the Offenders Goods and Chattels; or in case of the Poverty of such Offender, upon the Goods and Chattels of any other person or persons, who shall be then convicted in manner aforesaid of the like Offence at the same Conventicle, at the discretion of the said Justice, Justices or chief Magistrate respectively, so as the Sum to be levied on any one person in case of the poverty of other Offenders, amount not in the whole to above the Sum of Ten pounds, upon or

cation of any one Meeting as
 aforesaid. And every Consta-
 ble, Headborough, Tything-
 man, Churchwardens, and
 Overseers of the Poor re-
 spectively, are hereby Authorized
 and required to leby the same
 accordingly, having first recei-
 ved a Warrant under the hands
 of the said Justice, Justices or
 chief Magistrate respectively so
 to do; the said moneys so to be
 lebyed, to be forthwith delivered
 to the same Justice, Justices or
 chief Magistrate, and by him
 or them to be distributed; The
 one third part thereof to the use
 of the Kings Majesty, his Heirs
 and Successours, to be paid to
 the High Sheriff of the County
 for the time being, in manner
 following; That is to say, The
 Justice or Justices of Peace
 shall pay the same into the
 Court of the respective Quarter
 Sessions, which said Court
 shall

shall deliver the same to the Sheriff, and make a Demozial on Record, of the payment and delivery thereof, which said Demozial shall be a sufficient and final Discharge to the said Justice and Justices, and a Charge to the Sheriff, which said Discharge and Charge, shall be certified into the Exchequer together, and not one without the other: And no Justice shall or may be questioned, or accountable for the same in the Exchequer, or elsewhere, than in Quarter Sessions; Another third part thereof to and for the use of the Poor of the Parish where such Offence shall be committed; And the other third part thereof to the Informer and Informers, and to such person and persons as the said Justice, Justices, or chief Magistrate respectively shall appoint, having

ving regard to their Diligence and Induftry in the Difcovery, difperſing and puniſhing of the ſaid Conventicles.

And be it farther Enacted by the Authority aforeſaid, That every perſon who ſhall take upon him to Preach or Teach in any ſuch Meeting, Aſſembly, or Conventicle, and ſhall thereof be Convicted as aforeſaid, ſhall forfeit for every ſuch firſt Offence, the Sum of Twenty pounds, to be levied in manner aforeſaid, upon his Goods and Chattels; and if the ſaid Preacher or Teacher ſo Convicted, be a Stranger, and his Name and Habitation not known, or is fled, add cannot be found, or in the Judgment of the Juſtice, Juſtices or chief Magiſtrate before whom he ſhall be Convicted, ſhall be thought unable to pay the ſame, the ſaid Juſtice, Juſtices or chief Magiſtrate reſpective.

separately, are hereby Impowered and Required to levy the same by Warrant as aforesaid, upon the Goods and Chattels of any such Persons who shall be present at the same Conventicle; Any thing in this or any other Act, Law or Statute to the contrary notwithstanding. And the money so levied, to be disposed of in manner aforesaid; And if such Offender so Convicted as aforesaid, shall at any time again commit the like Offence or Offences contrary to this Act, and be thereof Convicted in manner aforesaid, then such Offender so Convicted of such like Offence or Offences, shall for every such Offence, incur the Penalty of Forty pounds, to be levied and disposed as aforesaid.

And be it farther Enacted by the Authority aforesaid, That every person who shall wittingly

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ly and willingly suffer any such Conbenticle, Meeting, or unlawfull Assembly aforesaid, to be held in his or her House, Out-house, Barn, Yard, or Backside, and be Conbicted thereof in manner aforesaid, shall forfeit the Sum of Twenty pounds, to be levied in manner aforesaid, upon his or her Goods and Chattels; or in case of his or her poverty or inability as aforesaid, upon the Goods and Chattels of such persons who shall be Conbicted in manner aforesaid of being present at the same Conbenticle; and the Money so levied, to be disposed of in manner aforesaid.

Provided alwaies, and be it Enacted by the Authority aforesaid, That no person shall by any Clause of this Act, be liable to pay above Ten pounds for any one Meeting, in regard of the poverty of any other person or persons.

Provided also, and be it farther Enacted, That in all cases of this Act, where the Penalty or Sum charged upon any Offender, exceeds the Sum of Ten shillings, and such Offender shall find himself agrieved, it shall and may be lawfull for him within one week after the said Penalty or Money charged, shall be paid or levied, to Appeal in writing from the person or persons Convicting, to the Judgment of the Justices of the Peace in their next Quarter Sessions; to whom the Justice or Justices of Peace, Chief Magistrate, or Alderman, that first convicted such Offender, shall return the Money levied upon the Appellant, and shall certifie under his and their hands and Seals, the Evidence upon which the Conviction past with the whole Record thereof, and the said Appeal:

Where.

Whereupon ſuch Offender may Plead and make Defence, and have his Tryal by a Jury thereupon: And in caſe ſuch Appellant ſhall not Proſecute with effect, or if upon ſuch Tryal he ſhall not be acquitted, or Judgment paſſe not for him upon his ſaid Appeal, the ſaid Juſtices at the Seſſions, ſhall give treble coſts againſt ſuch Offender for his unjuſt Appeal: And no other Court whatſoever ſhall intermeddle with any Cauſe or Cauſes of Appeal upon this Act, but they ſhall be finally determined in the Quarter Seſſions onely.

Provided alwaies, and be it farther Enacted, That upon the delibery of ſuch Appeal, as aforeſaid, the perſon or perſons Appellant ſhall enter beſore the perſon or perſons convicting, into a Recognizance, to proſecute the ſaid Appeal with effect: Which

Which said Recognizance, the person or persons Convicting, is hereby Impowered to take, and required to certifie the same to the next Quarter Sessions: And in case no such Recognizance be entred into, the said Appeal to be null and void.

Provided alwaies, That every such Appeal shall be left with the person or persons so convicting, as aforesaid, at the time of the making thereof.

And be it farther Enacted by the Authority aforesaid, That the Justice, Justices of the Peace, and chief Magistrate respectively, or the respective Constables, Headboroughs, and Tything-men, by Warrant from the said Justice, Justices, or chief Magistrate respectively, shall and may with what aid, force and assistance they shall think fit, for the better Execution of this Act, after refusal or denial
to

to enter, break open, and enter into any house or other place, where they shall be informed any such Conventicle as aforesaid is or shall be held, as well within Liberties as without; and take into their Custody the persons there unlawfully assembled, to the intent they may be proceeded against according to this Act: And that the Lieutenants, or Deputy-Lieutenants, or any Commissionated Officer of the Militia, or other of his Majesties Forces, with such Troops or Companies of Horse and Foot: And also the Sheriffs and other Magistrates and Ministers of Justice, or any of them jointly, or severally, within any the Counties or places within this Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, with such other assistance as they shall think meet, or can get

get in readines with the soonest, on Certificate made to them respectibely under the hand and Seal of any one Justice of the Peace, or chief Magistrate, of his particular Information or Knowledge of such unlawfull Meeting or Conventicle held, or to be held in their respective Countiees or Places; And that he with such Assistance as he can get together, is not able to suppress and dissolbe the same, shall and may, and are hereby required and enjoyned to repair unto the place where they are so held, or to be held, and by the best means they can, to dissolbe, dissipate, or prevent all such unlawfull Meetings, and take into their Custody such and so many of the said persons so unlawfully Assembled, as they shall think fit, to the intent they may be proceeded against according to this Act.

Pro.

Provided always, That no Dwelling-house of any Part of this Realm, where he or his Wife shall be then resident, shall be searched by virtue of this Act, but by immediate Warrant from his Majesty, under his Sign Manual; or in the presence of the Lieutenant, or one Deputy-Lieutenant, or two Justices of the Peace, whereof one to be of the Quorum of the same County or Riding.

And be it farther Enacted by the Authority aforesaid, That if any Constable, Head-borough, Tything-man, Church-warden, or Overseer of the Poor, who shall know, or be credibly informed of any such Meetings or Conventicles held within his Precincts, Parish or Limits, and shall not give Information thereof to some Justice of the Peace, or the chief Magistrate, and endeavour the Conviction
of

of the Parishes, according to his Duty; but such Constable, Head-borough, Tything-man, Church-warden, Overseers of the Poor, or any person lawfully called in and of the Constable, Head-borough or Tything-man, shall willfully and wittingly omit the performance of his Duty, in the Execution of this Act, and be thereof Convicted in manner aforesaid, he shall forfeit for every such Offence, the sum of five pounds, to be levied upon his Goods and Chattels, and disposed in manner aforesaid: And that if any Justice of the Peace, or chief Magistrate, shall willfully and wittingly omit the performance of his Duty in the Execution of this Act, he shall forfeit the sum of One hundred pounds, the one moiety to the use of his Majesty, the other moiety to the use of the Informer, to be

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reco-

18 Anno Viceſimo ſecundo
recovered by Action, Suit, Bill
or Plaint, in any of his Ma-
jeſties Courts at Weſtmiſter,
wherein no Eſtate, Protection,
or Wager of Law ſhall lie.

And be it farther Enacted by
the Authority aforeſaid, That
if any perſon be at any time
Sued for putting in Exe-
cution any of the Powers
contained in this Act, other-
wiſe than upon Appeal al-
lowed by this Act, ſuch perſon
ſhall and may plead the General
Iſſue, and giue the ſpecial mat-
ter in Evidence; and if the
Plaintiff be Non-ſuit, or a Ver-
dict paſſe for the Defendant, or
if the Plaintiff diſcontinue his
Action, or if upon Demurrer,
Judgment be giuen for the De-
fendant, every ſuch Defendant
ſhall have his full treble Coſts.

And be it farther Enacted by
the Authority aforeſaid, That
this Act, and all Clauſes there-
in

in contained, shall be construed
 most largely and beneficially
 for the suppressing of Conven-
 ticles, and for the Justification
 and Encouragement of all per-
 sons to be employed in the Exe-
 cution thereof; And that no
 Record, Warrant, or Mittimus
 to be made by virtue of this
 Act, or any Proceedings there-
 upon, shall be Reversed, Annoi-
 ded, or any way Impeached by
 reason of any Default in form.
 And in case any person offen-
 ding against this Act, shall be
 an Inhabitant in any other
 County or Corporation, or flee
 into any other County or
 Corporation, after the Offence
 committed, the Justice of the
 Peace, or chief Magistrate,
 before whom he shall be con-
 victed as aforesaid, shall cer-
 tifie the same under his hand
 and seal, to any Justice of
 Peace, or chief Magistrate of
 b 2 such

such other County or Corpora-
tion wherein the said person or
persons are Inhabitants, or are
fled into; which said Justice or
chief Magistrate respectively,
is hereby Authorized and Re-
quired to levy the Penalty or
Penalties in this Act mentio-
ned, upon the Goods and Chat-
tels of such person or persons,
as fully as the said other Justice
of Peace might have done, in
case he or they had been Inhabi-
tants in the place where the
Offence was committed.

Provided also, That no per-
son shall be punished for any
Offence against this Act, un-
less such Offender be prosecu-
ted for the same within Three
months after the offence com-
mitted. And that no person
who shall be punished for any
offence by virtue of this Act,
shall be punished for the same
offence by virtue of any other
Act or Law whatsoever.

Provided, and be it further
 Enacted by the Authority aforesaid,
 That every Alderman of
 London for the time being,
 within the City of London, and
 the Liberties thereof, shall
 have (and they and every of
 them are hereby Impowered
 and Required to Execute) the
 same Power and Authority
 within London, and the Liber-
 ties thereof, for the Exam-
 ining, Condemning, and Pani-
 shing of all offences within
 this Act committed within Lon-
 don, and the Liberties thereof,
 which any Justice of Peace
 hath by this Act in any County
 of England, and shall be subject
 to the same Penalties and For-
 feitures, for not doing that
 which by this Act is directed to
 be done by any Justice of Peace
 in any County of England.

Provided, and be it Enacted
 by the Authority aforesaid, That
 if

if the person offending, and
Convicted as aforesaid, be a
Feme-Covert, cohabiting with
her Husband, the Penalties of
Five shillings, and Ten shil-
lings, so as aforesaid incurred,
shall be levied by Warrant, as
aforesaid, upon the Goods and
Chattels of the Husband of
such Feme-Covert.

Provided also, That no Peer
of this Realm shall be Atta-
ched or Imprisoned by virtue or
force of this Act; Any thing,
Notte or Clause therein to the
contrary notwithstanding.

Provided also, That neither
this Act, nor any thing therein
contained, shall extend to inva-
luate or aboid his Majesties
Supremacy in Ecclesiastical
affairs; but that his Majesty,
and his Heirs and Successors
may from time to time, and at
all times hereafter, Exercise
and enjoy all Powers and Au-
thorities

thorities in Ecclesiastical Affairs, as fully and as amply as himself or any of his Predecessors have or might have done the same: Any thing in this Act notwithstanding.

Some

THIS BOOK'S VERY
OLD AND FRAGILE
GREAT
CARE TAKEN IN
FILMING TO OBTAIN
BEST RESULTS
POSSIBLE

(1)
S. A. 16. Car. 2. cap. 4. which is, and at the time
of making this Act was expired.

Observations upon
the Statute of 22 Car.
secundi, Cap. 1. En-
tituled, An Act to pre-
vent and suppress Se-
ditionous Conventicles.

IN

SECT. I.

FOR providing far-
ther and more spee-
dy Remedies, &c.
By the Statute of 16 Car. 2.
cap. 4. which is, and at the time
of making this Act was expired,
there were several other Acts yet
in force, for the preventing and
suppressing of Seditious Con-
venticles, as the Statute of 35 Eliz.
cap. 1. Entituled, An Act to Retain
the Queens Majesty's Subjects
B in

in their due Obedience; which Act being but Temporary at first by the Statute of 39 *Eliz. cap. 18.* was continued to the end of the next Parliament, and by the Statute of 43 *Eliz. cap. 9.* was continued to the end of the first Session of the next Parliament. And by the Statute of 1 *Jacobi, cap. 25.* was continued until the end of the first Session of the next Parliament. The same Parliament of 1 *Jacobi*, continued by several Prorogations in 3, 4, and 7 *Jacobi*, so that the next Parliament after the continuance of 1 *Jacobi*, was holden in 18 *Jac.* where only two Bills of Subsidies pass, and nothing more was done in that Parliament; whereupon in 29 *Jac.* it came to be a Question whether this Act of 35 were in force, or not, as appears in *Huttons Rep. fol. 41.* The Judges being in doubt as it seems, by reason of a Proviso in the Bills of Subsidies, that the Royal Assent to these

these Bills should not determine
that Session of Parliament, which
doubtless it did not; yet when the
Parliament was afterwards Dissol-
ved, and nothing more ^{of them}
done; The passing of ^{24. Eliz.}
these two Bills being ^{27. 28.}
matter of Record, made it such a
Session of the next Parliament that
discontinued this Act of 35. Eliz.
But to prevent the doubt after-
wards by the Statute of 1. Jacobi,
cap. 27. It was Enacted that so
much of the said Act of 35. Eliz.
as hath not been since Repealed by
any other Statute, shall be adjudged
ever since the Session of Parliament
in 7. Jacobi, to have been of such
force and effect as the same was
the last day of that Session. And
from thenceforth untill the end of
the first Session of the next Parlia-
ment, which next Parliament was
in 1. Car. Primus. And at the end
of that Parliament, this Statute of
35. Eliz. was again discontinued.

in their due Obedience; which Act being but Temporary at first by the Statute of 39 *Eliz. cap. 18.* was continued to the end of the next Parliament, and by the Statute of 43 *Eliz. cap. 9.* was continued to the end of the first Session of the next Parliament. And by the Statute of 1 *Jacobi, cap. 25.* was continued until the end of the first Session of the next Parliament. The same Parliament of 1 *Jacobi*, continued by several Prorogations in 3, 4, and 7 *Jacobi*, so that the next Parliament after the continuance of 1 *Jacobi*, was holden in 18 *Jac.* where only two Bills of Subsidies past, and nothing more was done in that Parliament; whereupon in 20 *Jac.* it came to be a Question whether this Act of 35 were in force, or not, as appears in *Huttons Rep. fol. 61.* The Judges being in doubt as it seems, by reason of a Proviso in the Bills of Subsidies, that the Royal Assent to these

these Bills should not determine that Session of Parliament, which doubtless it did not; yet when the Parliament was afterwards Dissolved, and nothing more ^{or more} done; The passing of ^{27. 28.} these two Bills being matter of Record, made it such a Session of the next Parliament that discontinued this Act of 35. Eliz. But to prevent the doubt afterwards by the Statute of 1. Jacobi, cap. 27. It was Enacted that so much of the said Act of 35. Eliz. as hath not been since Repealed by any other Statute, shall be adjudged ever since the Session of Parliament in 7. Jacobi, to have been of such force and effect, as the same was the last day of that Session. And from thenceforth untill the end of the first Session of the next Parliament, which next Parliament was in 1. Car. Prim. And at the end of that Parliament, this Statute of 35. Eliz. was again discontinued,

but by the Statute of 3 Car. 1. cap. 4. the Statute of 35 Eliz. viz. so much of it as hath not been Repealed by any other Statute, is continued to the end of the first Session of the next Parliament in such force and effect, as it was on the first day of the Session of Parliament holden in An. 1 Car. 1. And lastly by the Statute of 16 Car. 1. cap. 4. in the close of a Temporary Act, Entituled, An Act for the farther Relief of His Majesty's Army, and the Northern parts of the Kingdom. All Statutes and Acts of Parliament (whereof the Act of 35 Eliz. is one) which have their continuance, or were by the Act of 3 Car. 1. cap. 4. made, are Enacted to have continuance untill some other Act of Parliament be made touching the continuance or discontinuance of the same, by which last Act the Statute of 35 Eliz. is made perpetual; there having been no Act since

since made either for the continu-
 ance, or discontinuance of the same.
 But yet there remains one Questi-
 on upon it still, *viz.* why the Acts
 of 21 Jac. and 3 Car. 1. do not
 continue this Act of 35 Eliz. to-
 tally, but only so much of it as
 was unrepealed by any former Act.
 To this it is answered; That in the
 Act of 35 Eliz. there are two
 Clauses, being the 8th and 9th
 Paragraphs on Mr. Keble's Statute
 Book, the first, For imposing a Pe-
 nalty upon such Persons as should
 harbour or entertain in their Hou-
 ses any Person, which should obsti-
 nately refuse to repair to Divine
 Service by a Month. And the
 next Clause being a Proviso, That
 the Law should not extend to the
 harbouring of a Wife and other
 Relations there named, are both
 Repealed by the Statute of 3 Jac.
 cap. 4. which was the reason that
 the Statute of 35 Eliz. was not
 wholly continued, but only so
 much

much as was Unrepealed, which is the whole Statute, save only these two Clauses.

I have been the longer about this Act of 35 *Eliz.* to prove it in Force at this day ; for that notwithstanding the Judgment of the whole Parliament that it is in Force declared in the expired Act of 16 *Car. 2. cap. 4.* by which every Man ought to be concluded in point of Law ; it hath often been affirmed to me, that the Act of 35 *Eliz.* was discontinued, and not now in Force : but such Affirmation rather proceeded from affection to have it so, than from any other Ground.

The Statute of 23 *Eliz. cap. 1.* against saying and hearing of Mass.

The Statute of 13 and 14 *Car. 2. cap.* against Quakers.

The Statute of 13 and 14 *Car. 2. cap. 4.* for Uniformity of Publick Prayer.

The Statute of 17 *Car. 2. cap. 2.* com-

commonly called the *Oxford Act* for Restraining of Nonconformists from inhabiting in Corporations. All which Statutes, and several others did in part provide Remedies against the Seditious Practices of Sectaries, and Disloyal Persons. And this Act provideth further and more speedy Remedies against them.

1. That is any Person, &c. This word Person extends both to Men and Women. See the 16th Paragraph of this Act, And is Persons as well as Commonwealths. But Persons are not to be Arrested or Imprison'd, as Commonwealths may be. See the 17th Paragraph hereunder. So a Justice of Peace, or Mayor, or other Head Officer, being voluntarily present at a Convocation, in any other Cause, except by the suspending of it, may, and ought to be Compelled as an Ordinary under this Law.

3. Of the Age of 16 years or upwards, &c. This is plain, and if Evidence be given against a Person for being present at a Conventicle, who is of the growth, or stature of a young Man, or young Woman, it is to be intended that such Person is of the Age of 16 years, unless the contrary be specially made appear. And in such Case the proof, or *Onus probandi*, rests upon the Offender in such Convictions, whereupon there lies an Appeal by this Act, and so I take it to be likewise where the Offender is Personally Convented at the time of his Conviction, and objects not his Nonage to prevent his Conviction. But if one be Convicted as an Offender when absent, from which Conviction no Appeal is given by this Act, as where the Penalty is only 5 s. or 10 s. There, it may be the Conviction will be utterly void, and the Offender may maintain an action

tion of Trespass against the Officer that Levies the Penalty of 5 s. or 10 s. upon his Goods, for that he hath no other Remedy to help himself. And therefore if the Offender be present, when Convicted, it will be the safest way to mention it in the Record.

4 Being a Subject of this Realm, &c. The word (being) relates to the time of the Offence to be committed, and not to the time of passing the Act; for if an Alien at the time of the Act passed, were afterwards Naturalized, and afterwards be present at a Conviction, he is within the word, Being a Subject, &c. Though he were not a Subject of this Realm at the time of the Act passed. It is next to be considered, who shall be said to be (or rather not to be) a Subject of this Realm, within the meaning of the Act, for all men within the Realm are Subjects to the King, either (1.) By Birth, as born in *England*, or any other of the

the King's Dominions. (2.) By Naturalization, as where an Act of Parliament of *England* gives an Alien the same Privileges that a Subject born hath, by reason of his Birth. (3.) By Denization by the King's Letters Patents, whereby an Alien is made a free Denizen so purchase Lands, and to hold them to him and his Heirs, which an Alien cannot do, or, (4.) By residing, or being in *England*, under the King's Protection, as Aliens are, which makes them Subjects to the King of *England*, so long as they remain in any part of his Dominions, but no longer. But the word, Subjects of this Realm, in the Act intends a distinction, that some Persons Inhabiting within the Realm, should not be comprehended within the Law. And therefore by these words all Natural Subjects born in any of the King's Dominions. All Persons, that by Act of Parliament of *England*,

gland, are Naturalized Subjects, and all Persons Indenized by the King's Letters Patents under the great Seal of *England*, are comprehended within the Law (I mean) are to undergo the Penalty of the Law, for being present at a Conventicle. But Aliens resident in *England*, and those that are Naturalized, or Indenized in *Scotland*, or *Ireland*, and not in *England*, and so continue still as Aliens in *England*, are not within this Law, nor shall they be punished by it. Now in this Case, as well as in the Case of Infancy, under the Age of 16 years, the proof rests upon the Offender, for every one in this Case shall be presumed to be a Natural Subject of this Realm, unless the contrary be made appear. And the Conviction will be of the same effect against an Alien, as it is above declared to be against an Infant; only this I conceive fit to add, that if an Infant under 16, or

an Alien, having been present at a Conventicle, be summoned to appear before the Justice of Peace, or chief Magistrate, to shew Cause why he should not be Convicted for such offence, and refuseth, or neglecteth to appear, and make his defence, and thereupon he is Convicted; I take such Conviction to be binding, and the Infant, or Alien shall never avoid it, and the rather, by reason of the first part of the 13th Paragraph of this Act.

5. Shall be present at any Assembly, Conventicle, or Meeting, &c. Yet every one that is present (though a Subject of the Realm, above the Age of 16) shall not be punished as an Offender within this Law. For (1.) One that is an Idiot, or a Lunatick, " (unless it be during some lucid interval, wherein he enjoys the use of his reason, so far as to be supposed knowing of what he does) though present at a Con-

ven,

venticle, yet cannot be said to be present, under colour, or pretence of Exercise of Religion. One that is Imprison'd, and kept at a Conventicle against his Will. For *Actus non facit rem nisi mens sit rea*; the like may be said of him that is under a Terror of Bodily harm, by reason of Threats or Menaces of others, which he could not otherwise avoid, but by being present; but if a Servant by Command of his Master, or a Wife by Command of her Husband, be present, this will not excuse them, because they might, (without the Guilt of Disobedience) have refused to obey such Command; what if the Husband enforce his Wife, co-habiting with him, to be present at a Conventicle against her Will, whether is she to be Convicted or not? In this particular Case I conceive she is; for by the 16th Paragraph of this Act, the Penalties of 5 s. and 10 s. are to be Levied

Levied upon the Goods of the Husband. And so the Wifes being present at a Conventicle, is within the Letter, and the punishment of the Husband is within the meaning of the Act. If one be present at a Conventicle, to the end to detect, and discover the Conventicle, and to give Evidence against the Offenders, in order to their Conviction, he is not an Offender within this Law; but he that is present at a Conventicle, out of Curiosity to observe what they say or do, he is an Offender against this Law, and ought to be Convicted as well as any other.

6. Under Colour, or pretence of any Exercise of Religion, &c. The Preamble of this Statute saith, That seditious Meetings, and other Disloyal Persons, under pretence of tender Conscience, at their Meetings commit Insurrections. And these Meetings were, and are commonly under Colour,

Colour, or pretence of Exercise of Religion. Now if there be a Meeting of Sectaries, of the number of 5, or upwards, above the Household, or of five, or upwards, where there is no Household ; but before they proceed to any pretended Exercise of Religion, they are disturbed, and suppressed, the Question is, whether these, or any of them may be Convicted for being present at a Conventicle, under Colour, or Pretence of any Exercise of Religion, seeing none was there Exercised? This is a Question that may, and I suppose doth often happen, and I take it somewhat clear, that in such Case they may, and ought to be Convicted, for the chief end and design of that Statute was to prevent Sedition and Insurrections, and as a means to obtain that end, this Law is made to suppress Conventicles, where (as the Statute takes notice) Sedition and Insurrections were contrived. Now if they

they should not be Convicted, though there was no actual Exercise of Religion, then their Plotting Sedition, and contriving Insurrections being the greater Evil, should escape Correction, whilst a pretended Exercise of Religion being the lesser Evil, as being but in order to the greater Evil of Sedition and Insurrections, should be punished, which is not, nor could be the intent of the Statute; for in my Apprehension, the Statute meant, to punish all those that should meet together under pretence of Exercise of Religion, though none were actually Exercised; for that it is the same, or a worse mischief, than if there were any Exercise of Religion.

7. In other manner than according to the Liturgy and Practice of the Church of England, &c. What the Liturgy and Practice of the Church of *England* is, appears by the Act of Uniformity of

of 13 & 14 *Car. 2. cap. 4.* which is commonly printed before the Service Book, or Book of Common-Prayer; so where there is any Exercise of Religion in Publick, that is, where five, or more be met together, besides those of the same Household, there, if the Prayers in the Service Book be not used, and directions of that Book observed, that is an Exercise of Religion in other manner than according to the Liturgy, and Practice of the Church of *England*. But it may be Objected that the Service Book hath appointed the Form of Publick Prayers and Administration of the Sacraments, &c. But hath not appointed any Order to be observed in Preaching, and therefore Preaching in a Conventicle cannot be said to be in other manner than according to the Liturgy and Practice of the Church of *England*; there being no manner appointed by the Liturgy for Preaching. To
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To this it is answered; that by the 22^d Paragraph or Section of the Act of Uniformity, it is Enacted, That at all and every time and times, when any Sermon or Lecture is to be Preached, the Common Prayers and Service in and by the said Book (viz. the Book of Common-Prayer, appointed to be read for that time of the day) shall be openly, publicly, and solemnly read by some Priest, or Deacon in the Church, Chapel, or place of publick Worship, where the said Sermon or Lecture is to be Preached before such Sermon or Lecture be Preached; and that the Lecturer then to Preach shall be present at the reading thereof. So that Preaching in a Conventicle, where the Common Prayers appointed to be read for the time of the day are not first solemnly read, is an Exercise of Religion in other manner than according

ding to the Liturgy and Practice of the Church of *England*, and an Offence against this Statute.

8. In any place within the Kingdom of *England*, &c. These words are plain, and therefore if there be an Assembly or Meeting in a Church by five Persons or more, under pretence of any Exercise of Religion in other manner than according to the Liturgy and Practice of the Church of *England*, the same is a Conventicle within this Act, where any one, or more present, who is of the Age of 16, or upwards, and a Subject of this Realm, ought to be Convicted. But this is not to be understood of Foreigners, and Aliens of the Foreign Reformed Churches, allowed, or to be allowed by His Majesty, his Heirs, or Successors in *England*; for the Act of Uniformity (which this was made to strengthen) doth not extend so far, as by the Proviso in the 15th

Paragraph of that Act appeareth, and which Prerogative of allowance to such Foreigners, or Aliens Churches is saved to His Majesty by the last Paragraph in this Act.

9. At which Conventicle, Meeting, or Assembly, there shall be five Persons or more Assembled together over and besides those of the same Household, if it be in a House where there is a Family Inhabiting, or if it be in a House, Field, or Place where there is no Family Inhabiting, then where any five or more are so Assembled as aforesaid, then, &c. Now are we come to a complete definition of a Conventicle within this Act, which is, where five or more where there is no Household are met together under Colour or pretence of any Exercise of Religion in other manner than according to the Liturgy and Practice of the Church of *England*, wherein these things are

are to be observed, (1.) That the Person or Persons that are to be punished by this Law, for being present at a Conventicle, must be of the Age of 16, or upwards, and a Subject of this Realm. (2.) That though the Person to be punished, must have these Qualifications, yet Aliens (or Minors) if they are of discretion, may make up the number of five, to make it a Conventicle within this Law ; as for Example, suppose five are met together in a House, besides the Household, under Colour and pretence of Exercise of Religion in other manner than according to the Liturgy, &c. and four of those are Aliens, and the fifth a Subject of the Age of 16, this is nevertheless a Conventicle, though four of the five cannot be punished, as being Aliens, yet the fifth being a Subject, shall be Convicted and punished by this Law for being present at such Conventicle ; for the Law

describes him that is to be Convicted, to be of the Age of 16, or upwards, and a Subject of this Realm; but the Conventicle at which he was present, and for which he is Convicted, is only to be a Meeting together, or an Assembly of five, or more Persons, whether Aliens, or Subjects, is all one. (3.) That where there is a Meeting in a House of five Persons, or above, besides those of the Household, and so a Conventicle; there those of the same Household, if present at the Conventicle, being of the Age of 16, and Subjects of this Realm may and ought to be Convicted for being at the Conventicle, as well as any others. I think by the word Household, both Lodgers and Inmates are included; so that there must be five over and above the Household, and the Lodgers and Inmates as part of the Household. (4.) The Preacher or Teacher in such Conventicles, though

though an Alien, or not of the Age of 16, ought to be Convicted. See the third Paragraph of this Act. (5.) If a Subject of the Age of 16, or upwards, be present at the Church or Assembly of Foreigners or Aliens of the Foreign Reformed Churches allowed by His Majesty, he is not to be Convicted for being at a Conventicle, for seeing the Assembly it self is Lawfull, he that is present at it cannot be said to have committed an Offence within this Act.

10. Then where any five Persons or more are so assembled, as aforesaid, it shall and may be Lawfull to, and for any one or more Justices of the Peace of the County, County, Division, Corporation or Liberty wherein the Offence aforesaid shall be committed, or for the chief Magistrate of the Place, where the Offence aforesaid shall be committed, and he and they are hereby

by required, &c. By this Clause are the Magistrates described that have Authority, and ought to Convict Offenders for being at Conventicles, which are one or more Justices of the Peace of the County (that is, where there are Justices of the Peace of the whole County, as there are in most Counties in *England*) Limit, as in *Lincolnshire*, where there are two Commissions of the Peace, one for the parts of *Holland*, and another for the parts of *Kesteven* Division; as in *Torkshire*, where there are three Divisions, namely, the East-Riding, the West-Riding, and the North-Riding, and a several Commission of the Peace for each of those three Divisions; (Corporations) as *London*, *Tork*, *Bristol*, and others that are Counties of themselves, and wherein the Justices of Peace for the County at large, have nothing to do, or else such Corporations that continue parcel
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of the County at large, yet have Justices of their own exclusive to the Justices of the Peace of the County where the Corporation is, so that the Justices of the County may not intermeddle. And lastly, Liberties which have Justices of Peace within the Liberty, and yet the Justices of the County or Riding where such Liberties have a concurrent Jurisdiction. Now if where the Offence happens, be such a Liberty that the Justices of the County at large may not intermeddle; then the Justice or Justices of Peace of such Liberty are only bound to Convict the Offender; but if the Offence happens in a Corporation, or Liberty where the Justices of the County have a concurrent Jurisdiction with the Justices of the Liberty, there both the Justices of the County, as well as the Justices of the Liberty, are bound upon Notice to Convict the Offenders.

Now

Now what if the chief Magistrate, and one or more Justices of Peace of the place, should jointly Convict Offenders, where the Act saith, That one or more Justices of Peace, or chief Magistrate, is such Conviction good? I think it may be good enough, however I would not advise it as safe, because it seems prejudicial to the Appeals given by this Act, for it may fall out that all the Justices and chief Magistrate might Record the first Conviction, and the Party grieved would have no Appeal but only to the same Persons who Convicted him, which would be inconvenient. " And yet it seems any Justice
 " or Justices of Peace of the Corporation or Liberty, as well as
 " the chief Magistrate of the place
 " may make such Conviction, or all
 " together, for though the Appeal
 " should happen to be given to the
 " same Persons who made the Conviction, yet that takes not away
 " the

“ the benefit of such Appeal, for
 “ besides the supposed honour and
 “ impartiality of the Magistrate
 “ making such Conviction, upon
 “ the Appeal the Tryal of the Fact
 “ is to be by a Jury, whereas the
 “ Conviction is by the Opinion
 “ and Judgment of the Justice or
 “ Magistrate, and so as to the Fact
 “ the Party does as it were Appeal
 “ to a Jury from the Justice. See
 “ hereafter, Sect. 6. concerning Ap-
 “ peals.

II. Upon proof to him or them
 respectfully made of such Of-
 fence either by confession of the
 Party, &c. This Confession must
 be Judicial before the Justice him-
 self at the time of the Conviction,
 and not a Confession at another
 time, or before other Persons; for
 such Confession, though sworn be-
 fore the Justices by sufficient Wit-
 nesses, is only an Evidence, or Cir-
 cumstance of the Fact, but not a
 ground to Convict the Offender

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ipso facto, as a Confession before the Justice himself is.

12. **O^r Oath of two Wit-
nesses, &c.** An Infamous Person,
as one Convicted of Perjury, For-
gery, or of Felony, and not ha-
ving had his benefit of the Clergy,
nor pardoned, is by Law disabled
to give Testimony in any matter
or cause whatsoever, and therefore
cannot be one of the two Wit-
nesses within this Act, upon whose
Oath the Offender is to be Con-
victed, nor ought to be suffered to
be sworn, if the Justice know him
to be such; but if such Person be
sworn, and the Justice not know-
ing of such disability of the Party
sworn, do proceed, and upon such
Oath, and upon the Oath of one
other Witness, doth make a Re-
cord of Conviction, such Record
will be good in Law, and bind, un-
less (where an Appeal lyeth) it be
avoided by Appeal according to
the direction of this Act; a Jew
hath

hath been often admitted as a Witness by the Judge without the consent of Parties, and sworn upon the Old Testament, and so I conceive he may be in this Case. A man present at a Conventicle, though an Offender himself, is questionless a good Witness to give Evidence in order to the Conviction of any other for being present at the same Conventicle. A Man that is only Indicted of Perjury, or any other Infamous Crime, but not Convicted, is a Witness, for no Man is disabled to give Testimony upon Oath upon a bare Indictment only; note in this Case the Oath of the Witnesses, and all other Evidence given upon Oath before the Justice or Justices Convicting, should be put in Writing, and subscribed by the Party swearing, or giving such Evidence at the time of his Deposition or Examination, especially where an Appeal is given by this Act, for that
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by the 6th Paragraph it is required, That upon an Appeal the Justice certify to the Sessions the Evidence upon which the Conviction pass, which he cannot so well nor safely do, unless the Evidence be taken in writing and subscribed by the Party upon whose Oath the same is taken.

13. As to Notorious Evidence, and Circumstance of the Fact, &c. It is very difficult, if not impossible to lay down the exact measure or bounds, what shall be said to the Notorious Evidence and Circumstance of the Fact, and what not, and therefore it must be left to the Judgment and Discretion of the Justice, or Justices Convicting, upon weighing well, and considering of the Case, what doth appear to be a Notorious Evidence or Circumstance of the Fact. But this is to be taken notice of particularly, that the proof of two things are prin-

principally material. (2.) That there be a Conventicle, and, secondly, That the Party to be Convicted, was present at it. Now if a Conventicle be kept, and the same is afterwards dispersed, and the Preacher or Teacher in such Conventicle, or the Owner of the House where such Conventicle is held, or several Persons present at such Conventicle be Convicted for such Offence, afterwards another Person by two Witnesses is proved to have been there, or that he confessed he was there at the same time and place where the others Convicted were, but the Witnesses cannot prove it a Conventicle; yet here's a Notorious Evidence and Circumstance of the Fact sufficient to ground a Conviction. If the Justice of Peace be present at the suppressing of an Assembly of People, some of whom are immediately Convened before him, and Accused for holding and being at a
Con-

Conventicle in such Assembly, but no direct proof be made that it was a Conventicle, farther, than that they were Assembled together; if the Persons Convented can or will not give an account for what other Cause they were so Assembled or met together, or if they or some others at such Assembly are commonly known, and reputed to be frequenters of Conventicles, or that they commonly (though not always) do neglect coming to Church, or have declared, or any way made their dislike of, or aversion from the Liturgy or Doctrine of the Church of *England*: This is (in any Opinion) such a Notorious Evidence and Circumstance of the Fact, as is sufficient to ground a Conviction within the intent of the Law, and in such and the like Cases the Record of Conviction needs not make mention of any thing more, but that the Offender is Convicted
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by the Notorious Evidence and Circumstance of the Fact, without particularizing the Fact, for that where no Appeal lies, the Justice is the sole Judge of the Notoriety of the Evidence and Circumstance; and where an Appeal is given, there the Fact must be tryed over again, and so the Offender cannot be injured.

14 To make a Record of every such Offence under his or their Hands and Seals respectively, &c, For the Form of such Record, see hereunder. And note, that the subscribing the Justices hand to the Record, is absolutely Essential, for though the Justice set to his Seal, and it be so mentioned in the Record (which is as much as the Law requireth in most Cases,) yet this Act requiring the Record to be as well under his Hand as Seal; if it be not under both, the Record, and all that is done in pursuance of it will be altogether
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void,

Conventicle in such Assembly, but no direct proof be made that it was a Conventicle, farther, than that they were Assembled together; if the Persons Convented can or will not give an account for what other Cause they were so Assembled or met together, or if they or some others at such Assembly are commonly known, and reputed to be frequenters of Conventicles, or that they commonly (though not always) do neglect coming to Church, or have declared, or any way made their dislike of, or aversion from the Liturgy or Doctrine of the Church of *England*: This is (in any Opinion) such a Notorious Evidence and Circumstance of the Fact, as is sufficient to ground a Conviction within the intent of the Law, and in such and the like Cases the Record of Conviction needs not make mention of any thing more, but that the Offender is Convicted
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by the Notorious Evidence and Circumstance of the Fact, without particularizing the Fact, for that where no Appeal lies, the Justice is the sole Judge of the Notoriety of the Evidence and Circumstance; and where an Appeal is given, there the Fact must be tryed over again, and so the Offender cannot be injured.

14. To make a Record of every such Offence under his or their Hands and Seals respectively, &c. For the Form of such Record, see hereunder. And note, that the subscribing the Justices hand to the Record, is absolutely Essential, for though the Justice set to his Seal, and it be so mentioned in the Record (which is as much as the Law requireth in most Cases,) yet this Act requiring the Record to be as well under his Hand as Seal; if it be not under both, the Record, and all that is done in pursuance of it will be altogether
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void,

void. though it be not of absolute necessity that the Record should mention that the Justice hath put his Hand and Seal (so that it be actually done) but the better and safer way is to mention it in the Record according to the Precedent.

15. Which Record so made as aforesaid, shall to all intents and purposes be in Law taken and adjudged to be a full and perfect Conviction, &c. So as the Party Convicted shall be concluded to say that he is not guilty of the Offence contained in such Record he is so Convicted.

16. And thereupon the said Justice, &c. shall impose on every such Offender so Convicted as aforesaid, a Fine of five Shillings for every such First Offence, &c. This imposing the Fine must be in the same Record of Conviction, and not in any other Record by it self, and it is not safe nor justifiable,

ble to make a Warrant to Levy any Fine, but what is contained in the Record of Conviction.

17. Which Record and Conviction shall be Certified by the said Justice at the next Quarter Sessions, &c. The next Quarter Sessions is intended next after the Conviction, not next after the Offence committed; for perhaps the Quarter Sessions next after the Offence committed, may be past before the Offenders be Convicted.

“ Next Quarter Sessions, *i. e.* for
 “ the place where the Offence was
 “ committed, and the Conviction
 “ made, if by a Justice of the
 “ Peace for the County at large,
 “ then to the next Quarter Sessi-
 “ ons held for such County, if in
 “ a Corporation, or other Liberty,
 “ by the chief Magistrate or Justice
 “ of such place, then to the next
 “ Quarter Sessions for such place,
 “ if the Conviction be made by a
 “ Justice of the Peace of the Coun-

“ ty for an Offence committed in
 “ a Liberty or Corporation where
 “ the County Justices have a con-
 “ current Authority, then the
 “ same must be certified to the next
 “ Quarter Sessions of the County.

Note by the Statute of 2 *H. 5. cap.*

4. The Quarter Sessions are appointed to be holden in all the Counties of *England* four times in the year, that is to say, the first week after the Feast of *St. Michael*, and the first week after the *Epiphany*, and in the first week after the close or end of *Easter*, and in the first week after the Feast of Translation of *St. Thomas* the Martyr, which as I take it, always falls upon the 7th day of *July*. These are the four Quarter Sessions: But the same Statute directing that the Sessions should be held oftner, if need were; the Sessions holden at other times are called General Sessions, but not Quarter Sessions, by the Statute
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of 14 of *Hen. 6. c. 4.* The Justices of *Middlesex* are bound to hold Quarter Sessions but twice in the year, but they may (as they do) hold Quarter Sessions at the four times of the year abovesaid, and each of these Sessions is a Quarter Sessions, and Sessions holden at other times are General Sessions. Now every Quarter Sessions is a General Sessions, yet every General Sessions is not a Quarter Sessions, and not holden at the time appointed by the Statute of 2 *Hen. 5.* above mentioned.

S E C T. 2.

Obs. 1. **T**hat if such Offender so Convicted as aforesaid shall at any time again commit the like Offence, &c. By this Clause these two Points are to be observed, (1.) He that is to be Convicted, and to incur the Penalty of 10 s. must
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be

be Guilty of such Offence after the time he was Convicted of the former Offence, and not only after the time he committed the former Offence; for if one commit two or more Offences before he be Convicted, he may be afterwards Convicted for each of these Offences, but he shall only pay a Fine of five shillings for each Offence, and not 10 s. for either one of them; for that though he Offended twice, or oftner, yet he never Offended after he was once Convicted.

(2.) Where any one is Convicted for the second Offence, whereby the Penalty of 10 s. is imposed on him, the Record of such Conviction ought to mention and take notice of the Record of the former Conviction.

2. Which Fine and Fines for the first and every other Offence shall be levied by distress and sale of the Offenders Goods and Chattels, &c. But the Officer
may

may seize ready Moneys of the Offender if he can find it in his House, but he may not take it from the Person of the Offender, and by the word **Chattels**, must be understood Personal Chattels, which may be distrained, or levied as well as sold, and therefore a Lease for years, or other real Chattel, cannot be sold by the Officer for levying any Penalty imposed by virtue of this Act. " **Goods**
 " **and Chattels**, this reaches to the
 " **Utensils, Tools, and Instruments**
 " **of Trade, as well as any other**
 " **Goods and Chattels ; for the rule**
 " **of the common Law (that**
 " **exempts such, (where there's** not
 " **sufficient besides) from distress,)**
 " **extends not where distress is gi-**
 " **ven as an Execution by any par-**
 " **ticular Statute, as for Poors**
 " **Rates, Hearth-money, and so the**
 " **like on this Law, and governs on-**
 " **ly in distresses for Rents, Amer-**
 " **ciaments, and the like.**

3. **Of in Case of the Poverty of such Offender, &c.** What shall be said in a case of Poverty, and how shall it be determined, I conceive the Justice is the Judge of it, and may determine it at the time of the Conviction, and thereupon impose the Fine upon any other Convicted of the same Offence; but if the Party Convicted be taken to be Responsible, and a Warrant is made to Levy, and afterwards the Constable, or other Officer to whom the Warrant is directed, shall afterwards certify the Justice of the Poverty of the Offender, in that Case I take it, if it be within the three months, the Justice at his Discretion may impose the Fine upon any other Offender that is then Convicted of the same Offence; but if the three months are elapsed, then I think he cannot, though it is not clear. See the 14th Paragraph of this Act.

4. **Upon**

- 4 Upon the Goods and Chattels of any other Person or Persons who shall be then Convicted in manner aforesaid of the like Offence, &c. That is, of being present at one and the same Conventicle. For if *A.* and *B.* be both present at a Conventicle, now it is the like Offence in both, considering the Offence in it self. Now though *A.* hath been formerly Convict, and so he is to incur the Penalty of 10 s. and *B.* having not been formerly, is to incur the Penalty of 5 s. only. Now here the Penalty is different, yet the Offence is the like, and therefore in case of Poverty, the Fine of 10 s. for the Offence of *A.* may be imposed on *B.* or the 5 s. for the Offence of *B.* may be imposed upon *A.* or upon any other Convicted of being present at the same Conventicle; but I think the Preacher or Teacher in this Conventicle, is not within the meaning of
 • this

this Clause; for that though he be present, yet he is to be Convicted of a greater Offence, for taking upon him to Preach or Teach in the Conventicle, and not of the lesser Offence of being present at it.

5. At the Discretion of the said Justice, &c. Note this Discretion is bounded in these points, (1.) There must be Poverty of an Offender in the Case (at least in the Judgment of the Justice) or else there is no Room left for Discretion. (2.) The sum to be levied on any one Offender in Case of the Poverty of others must not amount to above 10^s. upon occasion of any one Meeting or Conventicle. These two Points being observed, the Law hath left it absolutely to the Choice and Discretion of the Justice upon what other of the Offenders at the same Conventicle (except the Preacher or Teacher there) to impose the Penalty

Penalty he shall think fit, wherein he may do well to have regard to the estate, and forwardness to offend of such Person or Persons, upon whom he shall impose the Penalty.

6. And every Constable, Headborough, Tythingman, Churchwardens, and Overseers of the Poor respectively are hereby Authorized and required to levy the same accordingly, having first received a Warrant, &c. The Warrant to levy the Penalties being under Hand and Seal of the Justice Convicting, is in its Nature an Execution for the King, and therefore the Officer upon demand made to have the Doors opened, and declaring of his Warrant at the same time, may break open the Doors to enter, and make Execution of the Warrant by levying of the Goods of the Offender, if upon such demand the Doors shall not be opened to him. " Though
" it

" it hath been questioned by some,
 " yet there's no colour to the contra-
 " ry; the objection they have made,
 " is, that this is a particular mode
 " of levying a penalty by way of
 " distress prescribed by an Act of
 " Parliament, and the King hath
 " no share or interest therein, till
 " distribution of the Money levi-
 " ed into three parts ; but certain-
 " ly this is the King's Suit, 'tis a
 " breach of his Law, a Convicti-
 " on by his Officers, and the dis-
 " tress is an Execution for him,
 " the Record of Conviction is a
 " Judgment, or Award for the for-
 " feiture of so much, &c. and be-
 " fore distribution the whole is his,
 " to be returned into the Sessions,
 " at least 'tis an Execution for
 " a third part for him, and as for
 " that, the Doors may be broken
 " open, and being so open, the rest
 " may be levied. The rest of this
 Paragraph is plain.

SECT. 3.

1. **A**ND be it farther E-
 nacted by the Authority
 aforesaid, that every Person
 who shall take upon him to
 Preach or Teach in any such
 Meeting, &c. Here the words
 (every Person who shall take
 upon him) are general, so that an
 Alien or Person under the Age of
 16, who shall take upon him to
 Preach, &c. is to be convicted,
 and forfeit 20 L. for the first Of-
 fence, as well as a Denizen, or Sub-
 ject of the Realm, of the Age of
 16 years, or upwards, (though
 every one that is to be Convicted
 for only being present at a Conven-
 ticle, must be a Subject of the
 Realm, and of the Age of 16 or
 upwards, as is aforesaid. " And
 " here by this clause, if in such
 " Meeting several shall take upon
 " them successively to Preach or
 " Teach,

" Teach, though at one time of
 " Meeting, yet every such Person
 " comes within the penalty of this
 " clause, and their Penalties to be
 " levied, as in case there be but one.

2. And if the said Preacher or
 Teacher so Convicted be a stran-
 ger, and his Name and Habita-
 tion not known, or is fled, and
 cannot be found, &c. These
 words must be taken in the dis-
 junctive (that is) if the Preacher
 be a stranger (who is presumed to
 be not known (or if his Name be
 not known (for then he cannot be
 Convicted) or if his Habitation
 be not known, for then by pre-
 sumption the Penalty cannot be
 levied. In either of these Cases
 the Penalty may be levied upon
 other Offenders present at the same
 Conventicle, and where the Sta-
 tute saith (not known) that must
 be intended not known to the
 Justice or Officers that suppress
 the Conventicle, and prosecute the
 Offen-

Offenders, for there is no Question but the Preacher, and his Name and Habitation is or may be known to the Conventiclers themselves ; but if not known to the Officers, he is not known according to the Intent of this Law.

3. *Q:* is fled and cannot be found, &c. That is so fled, that he cannot be found by the Officers that prosecute him for the Offence, though perhaps he is not so fled, but may easily be found by his own Disciples.

4. *Q:* in the Judgment of the Justice, Justices or chief Justice or Magistrate before whom he shall be Convicted, shall be thought unable to pay the same, &c. This Clause supposeth the Teacher or Preachers Name to be known, otherwise he cannot be Convicted at all. I say the Preacher or Teacher cannot be Convicted, if his Name be not known, but by the former Clause, if his Name

Name be not known, the Penalty of 20 £. may be imposed upon others present at the same Conventicle, where the Preacher or Teacher's Name is known. The Judgment of the Justice, &c. of the Preacher's inability to pay, ought to appear upon Record under his Hand and Seal.

5. The said Justice, Justices, or chief Magistrate respectively are hereby Impowered, and required to levy the same by Warrant as aforesaid, upon the Goods and Chattels of any such Person who shall be present at the same Conventicle, any thing in this or any other Act, &c. By this Clause it seems to me that the Penalty in this Case may be imposed upon any Person present at the same Conventicle, though such Person upon whom it is imposed, be not Convicted for being present at the Conventicle, nor can be Convicted for being

ing present as an Alien or Subject under 16 years of Age: And the different penning of this and the precedent Paragraph, seems to make it clear; for in the precedent Paragraph the words are, that the Penalty there mentioned, in case of Poverty of such Offender, (12) He is Convicted for being present at a Conventicle,) shall be levied on the Goods and Chattels of any other Person or Persons who shall be then Convicted in manner aforesaid of the like Offence at the same Conventicle; so the Penalty there can be laid upon none but such as by this Law are, and ought to be Convicted for being present at the same Conventicle; but an Alien or Subject under 16 years, cannot be Convicted for that Offence. But here the words of this Paragraph say, that the Penalty of 20 l. here mentioned, may be levied upon any such Persons who shall be present

at the same Conventicle, whether Convicted or not, and an Alien may be present at a Conventicle, though he cannot be Convicted, whereby to Forfeit 5 s. as a Subject may; but the Penalty imposed on the Preacher, so far as 10 l. may be levied upon him, and the *non obstante* in this Paragraph doth seem to confirm this Construction.

5. And the money so levied to be disposed of in manner aforesaid, &c. That is as above directed by the next precedent Paragraph, (*viz.*) One third to the King, one other third to the Poor of the Parish where the Offence was committed, and the other third to the Informer, and such Person as the Justice shall appoint.

6. And if such Offender be Convicted as aforesaid shall at any time again commit the like Offence, &c. The commitment of the said Offence must be after the Conviction for the first. See above, § 2. Obs. 1.

7. Shall

7. Shall for every such Offence incur the Penalty of forty pounds to be levied and disposed as aforesaid. This Penalty of 40 £ may be levied upon the Preacher as the 10 £ penalty above; and in case of Inability of the Preacher, upon the Goods of others present at the same Conventicle, in like manner as the Penalty of 20 £ might.

SECT. 4

MVSEVM
BRITANNICVM

Obs. 1.

AND be it further Enacted by the Authority aforesaid, that every Person who shall wittingly and willingly suffer any such Conventicle, &c. These words conclude Aliens as well as Denizens, and Peers as well as Commons.

2. To be held in his or her house, &c. That is, in the House or Out-house in his or her Possession, whereby he or she might have

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hindered the Conventicle from being held there, for in this Case the bare possession of the House (though without any Title) makes it to be his or her House within the intent of this Law; as for Instance, if a man enter upon me, and put me out of Possession of my House by wrong, and keeps me out of Possession, and in that time suffers a Conventicle to be holden in the same House; now he that hath sold the Possession of my House, is to be punished for suffering a Conventicle in his House, though in truth the Title of the House be mine.

3. **Of in Case of the Poverty,**
 &c. This is in the Judgment of the Justice of Peace Convicting as above, in case of the Preacher, but the Penalty in this Case of Poverty is only to be levied upon such as shall be Convicted for being present at the same Conventicle, and not upon Aliens, who are not
 to

to be Convicted for being present at the Conventicle. The penning of this Clause, and the like Clause in the second Paragraph, do exactly agree, but are both different from the Clause in the third Paragraph, where the Penalty of the Preacher, in case of his Poverty or inability, is to be levied on any Person present at the same Conventicle, though not Convicted.

SECT. 5.

1. **T**his is clear, yet it may be doubted whether more than ten pounds may not be imposed upon one Person for the Penalty of the Preacher, where his Name or Habitation is not known, for that Penalty is not imposed in regard of the Poverty, or inability of the Preacher; but because he is not known, so as the Justice might judge whether he were able to pay the Penalty or not. The

Husband and Wife co-habiting, are both present at a Conventicle, and Convicted, whereby the penalty of 5. s. imposed upon the Wife, is to be levied on the Husband's Goods; yet the Husband may be charged with 10 £ besides, for, and in regard of the Poverty of another, for the Wifes Penalty of 5 s. is not laid upon the Husband in regard of her Poverty, but in regard of the Relation between them. Where there is a Penalty of twenty Pounds or more to be imposed in respect, the Justice may assess what sum he thinks fit upon each party lyable, so that no one be charged with more than 10 /. in regard of Poverty, &c.

ACT.

A C T.

SECT. 6.

1. **P**Robbed also, and he is
 farther Enacted, That
 in all Cases of this Act, where
 the Penalty, or Summ charged
 upon any Offender, exceeds the
 Summ of 10 s. This Paragraph
 gives an Appeal to the Offender in
 certain Cases, whereupon these
 things are to be taken notice of,
 (1.) The Person that may Appeal
 must be an Offender charged with
 above the summ or Penalty of
 10 s. for if he be charged with the
 summ or Penalty of 10 s. only, or
 under, he is concluded by the
 Conviction, and cannot appear.
 A Constable Convicted upon
 the 11th Paragraph of this Act
 may Appeal. (2.) The time
 when he may Appeal, and that
 must be within one week after the

Penalty above 10s. be levied upon his Goods, &c. or else after the voluntary payment of such Penalty either to the Officer or Justice Convicting, so that before the whole Penalty charged upon the Offender, be either levied or paid, the Offender cannot Appeal, neither can he Appeal at all, if a week be elapsed after the Penalty levied or paid, and no Appeal within that time; but in such Case the Offender is for ever concluded by the Conviction before the Justice, &c. (3.) The manner of Appealing must be in writing from the Person or Persons Convicting (*i.e.*) the Justice or Justices of the Peace, But such writing need not be subscribed by the Party Appealing. (4.) The Judges to whose Judgment the Appeal lyeth; are the Justices of Peace in their next Quarter Sessions (that is) next after the Appeal, and not next after the levying or payment of the money,

money, and it must be the Quarter Sessions for the same County, Liberty, or Place where the Offence was committed, and the Offender Convicted, and not any other. " If it were in a Corporation by the chief Magistrate, " and Justices of the Corporation, " the Certificate and return of " monies levied, and the Appeal " must be to the Sessions for such " place, and not to the Quarter " Sessions for the County at large, " and so was it ruled in the case of " the Town of *Southmolton* in *Devon*, to the Mayor of which " place the Court of *Kings-Bench*, " *Mic. 35. Car. 2.* granted a *mandamus* for the receiving an Appeal from a Conviction of a Convicticle held in that Town, " made by the chief Magistrate of " that Corporation.

2. To whom the Justice or Justices, &c. that first Convicted such Offender, shall return

the money levied upon the Appellant, &c. Though the words are only the Money levied upon the Appellant; yet the Money paid by the Appellant is to be returned by the intent of the Law; and here is a necessary Caution to be observed by the Justice Convicting, that where any Penalty of above 10 s. is levied upon, or paid by one Offender, he do not proceed to make distribution of the Penalty so levied or paid, till one full week be past after the levying, or payment of it, for the Offender hath that time to Appeal in, and if he doth Appeal within that time, the Justice is to return the whole Monies to the Sessions; and if the Offender upon his Appeal be acquitted by the Sessions, he is to be restored to all his Money. The Justice upon his Appeal is to certify the Record of the Conviction, and the Evidence upon which the Conviction past under

der his Hand and Seal, and also the Appeal made before him in writing, that the Sessions may the better be enabled to proceed, as the merits of the Cause shall appear before them.

3. Whereupon such Offender may plead, and make Defence, and have his Tryal by a Jury thereupon, &c. The Offender may plead that he is not Guilty of the Offence contained in the first Conviction, which in this Case stands instead of an Indictment, and thereupon Issue being joined for the King, the Appellant may give in Evidence, that it was not a Conventicle where he was present, but a lawfull Assembly, or that he was elsewhere, and not present at such Conventicle as the Conviction supposeth, or any other matter that is legal Evidence for his Acquittal; and on the other side the Prosecutor for the King may produce, and give in Evidence
any

any new matter for the proving of the Appellant guilty of the Offence contained in the Conviction from which he hath so Appealed. And I take it, that though the Statute hath indulged the Offender to plead to the Fact, and to have a Tryal by a Jury, yet if the Appellant thinks fit, he may by a Demurrer insist upon matter in Law at the Sessions, for that the Conviction is insufficient in substance (for want of Form is no exception by the 13th Clause of this Act) as that it doth not appear that any Conventicle was holden, or that it appeareth by the Record of the Conviction, that it was a lawfull Assembly, and not a Conventicle, or that it doth not appear that the Appealant was present at any such Conventicle. In those or the like Cases, if the Appellant doth demurr to the Conviction, and the Prosecutor for the King joins in demurrer, the
Court

Court of Sessions ought to give Judgment either for, or against the Appealant; as the matter in Law doth appear before them: But now let us see what other matters of Fact, besides not Guilty, the Appellant may plead at the Sessions; and first I conceive he may plead the Kings Pardon after the Offence committed, and before the Conviction; for after the Conviction, the Pardon comes too late, (save only for the King's third part) and if such pardon under the great Seal be shewed in Court, as it must be, if it be pleaded, the Court (if the Pardon appears to be sufficient in Law) ought to discharge the Appealant of the Conviction, and the Penalties imposed by such Conviction; the Appealant may likewise plead Anterfois Convict, (*viz.*) that he was formerly Convicted of the same Offence, and hath paid the Penalties, or that the same have been
le-

levied upon his Goods, and so ought not to be twice charged for the same Offence; and this is a good Plea to discharge him, but if the Penalties upon the other Conviction be not paid, or levied, then such Plea of Autrefois Convict ought not to be allowed; for perhaps the former Conviction might be past by some contrivance of the Offender or his Agents, that the Penalties should not be levied, and so by a mean the Offender might escape unpunished, if the Plea of Autrefois Convict should be allowed without the Penalties being levied or paid. On the other hand, it can be no mischief to the Appellant, for though he stands twice Convicted for the same Offence, yet the first payment of the Penalties dischargeth him of both Convictions; for if the Penalties should be again levied upon him, he hath liberty in a week after to Appeal, and upon shewing his
 Case

Case by Plea at the Sessions ought to be relieved, and restored to his Money so levied the second time.

And in Case such Appellant shall not prosecute with effect, &c. If at the next Quarter Sessions, the Appellant shall not appear, and plead matter of Fact or Demurr in Law to the Record of the first Conviction, this will be a Non-prosecution whereby treble Costs are to be given against him, so that if he do not appear at the day given him, from time to time, till the Appeal be determined; but if he appears, and upon motion, the Court of Session, for some Cause seeming reasonable to them, do grant farther time to the Appellant for drawing of his Plea, or if after Plea pleaded, they grant him farther time than ordinary for Tryal, in such case this is no default in the Appellant, and therefore no Costs to be awarded against him; so if the Court do take
time

time to consider of the matter in Law, this is not a Failer of Prosecution of the Appealant whereby to subject him to the payment of any Costs, and in all cases of Non-prosecution, there must be a Record of it made by the Sessions.

Or if upon such Tryal he shall not be Acquitted, &c. It is not said, if upon Tryal the first Conviction shall be affirmed, or found true; but, if the Appealant shall not be acquitted; suppose the Appealant be Convicted of being present at a Conventicle, and 5 s. Penalty imposed upon him, and in regard of the Poverty of the Teacher, 10 l. more is imposed upon him, which being levied, he Appeals, and pleads that the Teacher was able to pay himself, and therefore the Appealant ought not to have been charged with the 10 l. In this Case I conceive such Plea is insufficient, and though it were found so by verdict at the Sessi-

essions, yet the Appealant is not acquitted of the Offence (which is) of being present at the Conventicle, nor is the Teacher found innocent, and therefore the Appealant cannot be relieved, but ought to pay treble Costs for his unjust Appeal; but what if upon the Appeal the Appealant doth not make it appear, and it is so found by Verdict, that though the Appealant was present at the Conventicle, and thereby forfeited 5 s. for the Person, in regard of whose poverty the sum of 10 l. or any lesser sum was imposed upon the Appealant, was not at all present at the same Conventicle. Now the Appealant is not totally acquitted, for the Conviction of his being present at the Conventicle stands in force; yet in this Case I conceive he is to be discharged of the other Penalty imposed upon him, and to be excused from payment of any Costs, and the difference

rence between this Case and the next precedent is this. In the former Case the Person in regard of whose Poverty, &c. was either a Teacher, or present at the Conventicle, whereby the Justice Convicting had a Jurisdiction to impose the Penalty either upon the Party himself, or upon some other; but in this case the Justice hath no Authority at all to impose a Penalty either upon one that was not present at the Conventicle, or in regard of the Poverty of one that was not present at the Conventicle, which diversity is apparent; what if the Penalty in regard of the Poverty of another imposed upon the Appealant, hath been imposed upon the Party himself, or upon any other, and hath been actually levied or paid? In this Case I think the Appealant is to be relieved against that Penalty, and though he be not totally acquitted, yet he ought not to be charged with Costs. D.

On Judgment pass not for him upon his said Appeal, &c. This Clause seems to confirm the Opinion above, that the Appellant may demurr in Law to the Conviction, and pray the Judgment of the Court of Sessions upon it, without Pleading to Issue, or having a Tryal by a Jury, as the Act saith. Note, that where the words are (**Judgment pass not for him upon his said Appeal**) it is to be understood that Judgment pass not for him upon the determination of the Appeal at the end of the Suit; for whilst the Appeal depends undetermined, it cannot be known whether Judgment shall pass for him or not.

The said Justices at the Session shall give treble Costs against such Offender for his unjust Appeal, &c. That is, the Justices at the Session shall give Judgment that the Offender pay treble Costs, for that is the meaning

ning of the words, (~~give~~ **treble Costs**) but who shall have this treble Costs? I conceive the Prosecutor of the Conviction that Prosecutes at the Sessions, whose Name ought to appear in the Record of the Sessions. But what if the Offender Appeals to the Sessions, and the Justice Convicting Certifies the Record of Conviction, the Evidence and the Appeal; but the Appealant doth not appear at the Sessions at all, nor doth any thing in Prosecution of his Appeal; how shall the Prosecutors Name appear in such Case? To this I answer; that in this Case no Costs are to be given, but only the Appealant's Non-prosecution to be Recorded, whereby he Forfeits his Recognizance given to prosecute his Appeal with effect; but if the Appealant one appears and pleads, or demurrs, as he must, then the Prosecutor's Name will appear. And if afterwards the
Ap-

Appeal is not Prosecuted but discontinued. Then treble Costs are to be awarded to the Prosecutor, as well as where the Offender upon Tryal is not acquitted, or Judgment pass not for him upon the determination of the Appeal.

And no other Court whatsoever, &c. By this Clause the Justice of Peace Convicting where no Appeal lieth, and the Justices of the Session, where an Appeal is given, are made the final Judges of the Offences of being present at a Conventicle. And of any Person's taking upon him to Preach or Teach in a Conventicle, or wilfull suffering a Conventicle to be held in his or her dwelling House, &c. And of a Constable's Omission of the performance of his Duty in Execution of this Act, and this exclusive to the great Courts at *Westminster-Hall*, and all other Courts whatsoever; yet if a *Certiorari*, or Writ of Errour issue

out of any of the great Courts at *Westminster Hall*, and be delivered either to the Justices Convicting, or to the Sessions, they ought not to proceed till the Court, out of which such a Writ issued, be informed of the matter, and shall think fit to supersede their own; for though the Justices of Peace, and the Sessions, be made the final Judges of the Offences. *aforesaid*, yet they are not Judges of the Process of the superiour Courts, but only the superiour Court it self, out of which the Process issued.

SECT.

SECT. 7.

1. **U**Pon the delivery of such Appeal as aforesaid, &c. The time for delivery of the Appeal must be within one week next after the Penalty levied or paid, and at the time of the delivery of the Appeal in writing the Appeal is made. Now the Act appoints that a Recognizance be entred into for the prosecuting of the Appeal at the same time, that is, at the same instant of time the Appeal is delivered. And the Recognizance must have these Circumstances, it must be entred into by the Party himself Appealing, and (in strictness) not by any other, (though sufficient) security for him, it must be acknowledged before, and taken by the same Justice that made the Record of the Conviction; but if the Conviction be by two or more Justices the Appeal

delivered to, and the Recognizance acknowledged before any one of them is sufficient. But if both, or all of the Justices Convicting are together, the Recognizance must be acknowledged before them all, though the Statute hath not appointed any sum to be contained in the Recognizance; yet it ought to be in a reasonable sum, which is commonly, and usually double the sum in Question, which in this Case is double the Penalty imposed on the Offender that Appeals. There may be some doubt how the Appeal is to be made, or the Recognizance entred, when the single Justice Convicting shall happen to die, or be out of Conviction before the time of Appeal; but that being a matter rarely happening, I shall not spend time about it at present.

SECT. 8.

That is at the time of making the Appeal, and the Appeal cannot be said to be made till it be delivered, and the Recognizance entred.

SECT. 9.

After refusal or denial, to enter, break open, and enter into any house, or other place where they shall be informed, any such Conventicle as aforesaid is or shall be held, as well within Liberties as without, and take into their Custodies the Persons there unlawfully Assembled, to the intent, &c. In all Cases where the outward door of a House may be broken, the Law (as this Act) doth require, That first, A Demand be made to have the Door opened, for Force is not
to

to be used where the Law may be Executed in a peaceable and quiet manner. Now a refusal or denial to enter, is not only intended of an Actual or expresse denial, or refusal to open the doors, but also of a refusal or denial in Law, as where the Officers require the Doors to be opened, and the Conventiclers make no answer whether they will or will not open the Doors; or if they answer that they will open the Doors, but notwithstanding they do not open the doors, this is a refusal and denial in Law, as strong as if they had expressly refused or denied to open the doors; and thereupon the Officers may break open the doors, and seize the Offenders (of mean Conventiclers) and secure them in Custody untill the Officers can conveniently bring them before a Justice of Peace to be Convicted, and then the Offenders are to be discharged out of Custody. But
 what

what if any Offender in such Case, being brought before a Justice of Peace to be Convicted, shall refuse to discover his Name and Place of Habitation, whereby the Justice cannot proceed to a Conviction of him. In such Case the Justice may commit him to the common Gaol for his Contempt, and by the *Mittimus* shewing the Cause of such Commitment, the Offender will be held untill he doth discover his Name and Habitation (for it is impossible he can be Bailed) for though an Offender may be committed without a Name, yet his Name must be known before he can be Bailed, and then the Justice may proceed to Convict him of the Offence, for being or Preaching at the Conventicle, as the Case falls out, though it be after the end of three months, for that the first was prosecuted within the three months. Now it is to be considered what is to be done, supposing there

there be a Conventicle held, and the doors are open, or upon demand made by the Officers, the doors are immediately opened, and they are permitted to enter freely; whether then the Officers may take any of the Offenders into Custody or not? And I take it, that if the Conventiclers do make known their Names and places of Habitation, and do depart peaceably when commanded by the Officer, they may not be taken into Custody, because in such Case they may be Convicted without being taken into Custody: But if the Offenders do refuse to make known their Names, then such of them as do so refuse, may be taken into Custody, and if at Command of the Officers, the Conventiclers refuse to depart, or do not depart and disperse themselves peaceably, they may be taken into Custody likewise, and this seems clear by the latter part of this Paragraph.

And

And that the Lieutenant or Deputy-Lieutenants, &c. Here the Military Power as well as the Civil Power, is to be assisting for the dissolving, dissipating, and preventing of Conventicles ; but the Lieutenants or Deputy-Lieutenants, &c. are not to intermeddle, before they have first received a Certificate under the Hand and Seal of a Justice of Peace or chief Magistrate of his particular information or knowledge of any unlawfull Meeting or Conventicle held or to be held, and that he with such Assistance is not able to suppress and dissolve the same. This Certificate may be made sometime before the Conventicle held as well as at the time ; and though it cannot be so well known before hand, whether the Justice or chief Magistrate with such Assistance, &c. be able to suppress the Conventicle or not ; yet if the Justice hath reason, or any probable

ble ground to believe that he shall
 not be able to suppress the Con-
 venticle, whereof he hath notice,
 he may make his Certificate, that
 the Military Power may be rea-
 dy; for if a Certificate should not
 be made till the very time of the
 Conventicle held, it would per-
 haps be too late for the suppressing
 of them, and the words of the
 Act are, To prevent such un-
 lawfull Meetings as well as
 to dissolve and disperse them.
 And note, that if there be such a
 Conventicle as cannot be sup-
 pressed by the Justice himself
 with such Assistance as he can
 get, but there is need of Mil-
 itary Power, or some other grea-
 ter power to be raised by the
 Sheriff or other Officer, in
 such case the Conventiclers, or
 so many of them as the Offi-
 cers suppressing of them shall
 think fit, Peers of the Realm
 only excepted, may be taken in

to Custody, and kept in Custody for
 such convenient time, till they shall be
 Committed by the Justice or chief Mag-
 istrats. But suppose the Justice that
 would suppress the Conventicle, be
 himself a Deputy-Lieutenant, and be
 as a Justice is not able to suppress
 the Conventicle, I conceive in such
 Case he may make use of his Mi-
 litary Power, and get such Troops
 or Companies of Horse and Foot,
 as he shall think meet, and can get
 in readiness with the soonest; By
 this Law any Justice of the Peace,
 Constable, or other Officer going
 in Execution of this Act to sup-
 press and disperse such unlawfull
 Assembly, they may call or com-
 mand any Person whatsoever in-
 to their Aid or Assistance, and in
 Case of refusal they are punish-
 able, as by the 11th Section, see
 hereafter; And did not this Law
 expressly enable them to do it, they
 might do it by the general Autho-
 rity of their Offices in this Case, as
 they may for the suppressing of Af-
 frays, Riots, Routs, and other un-
 lawfull Assemblies.

And

And take into their custody such
 persons so assembled as they shall
 think fit. Some are of opinion,
 and it hath been so resolved, that
 by force of these words they may
 imprison any of them for any con-
 venient time in order to examina-
 tion, not only of their own names
 and places of Abode, but of the
 Teacher or the like; and that the
 Military Power they may use in
 taking and detaining of such per-
 sons till examined of such things
 as may be needfull for the making
 a Conviction of such Meeting or
 Assembly, and this they ground
 upon the words as they shall think
 fit: *Sed quære*, for the Lord *Saunder*
 his opinion afore: *Pag. 76.*
 seems more consonant to the let-
 ter of this Clause, *viz.* that their
 Commitment is to be only till
 make known their own names
 and places of Abode, that they
 may be proceeded against, &c.

Provided alwaies that no
 dwelling house of any Peer
 of

of this Realm, &c. This seems
 not to extend to the dwelling
 House of any Dutchess, Countess,
 Baroness, or other Noblewo-
 man, but they may be searched
 by virtue of this Act, notwith-
 standing this Clause, as by the
 reading of it appears plain, it
 being said to be such House
 where he or his Wife shall be
 Resident; this must be meant
 actually Resident, and therefore
 extends not to any House which
 a Peer hath leased to another,
 nor to any Mansion House unin-
 habited, or wherein he hath on-
 ly Servants, and doth not Per-
 sonally reside in; for suppose a
 Peer have several Houses, to
 which he repairs at several Sea-
 sons of the year, and hath Ser-
 vants in all, and a Meeting
 prohibited by this Law doth hap-
 pen to be held in such of his said
 Houses, where at that time he
 nor his Wife is resident, such
 G House

House may be searched by virtue of this Act, and broken open too for the dispersing such Meetings, for the words are, shall be resident at such time: If a Conventicle be held in any Barn, Stable, or other like of a Peer's, not being parcel of his dwelling House, such place may be searched, though the same be in the possession of a Peer: And notwithstanding this Clause, a Conviction may be made of such a Meeting that has been held in the dwelling House of a Peer, though he be resident in it, and such Peer incurs the Penalty of this Act as Owner of the House, permitting the same. See above on the 4th Section.

Except in the presence of &c. Such dwelling House seems not searchable by any Corporation Justice, he not being named in this exception, but a Lieutenant, or Deputy Lieutenant.

nant of such County, may search
such a House upon the Informa-
tion of a Justice of the Peace,
though he be no Justice him-
self, nor of the same Riding.

SECT. II.

BE it farther Enacted, that if
any Constable, &c. This
Clause extends to his not execu-
ting any Warrant for levying the
Penalties of this Act by distress,
as well as to his not informing
some Justice of a Conventicle
whereof he knows; so if he in-
form not some Justice thereof
(when he conveniently may)
till the Meeting be over, and so
they could not be suppressed, nor
the Persons so well known, in
order to the making of a Con-
viction: If a Constable, &c.
keep or suffer a Conventicle in
his House, he forfeits the Penal-
ty of 20 *l.* for so doing, and 5 *l.*

for not informing a Justice thereof, the like if he be present at any Meeting, and not in order to detect it ; he may be punished for being so present, and sued for the $\text{5 } l.$ also, for they are several Offences : Credibly informed, &c. such Information as another gives him of his sight of sundry Persons going to an House suspected, or generally used for such purposes at such times as usual, &c. is sufficient information to oblige the Constable to acquaint the Justice, for a less information here will serve him than a Justice of the Peace for to make a Conviction, the Justice is to have it upon Oath, &c. the Constable, &c. is not Judge of the truth of the Fact, he is only a Ministerial Officer or Servant in this Case. A Constable, or Tything Man or the like, that gives notice of his Warrant, or of a Justices coming

' ming to suppress such Meeting
 ' is undoubtedly Guilty of this
 ' Offence, and besides liable to be
 ' Indicted at common Law for any
 ' such misfeasance or neglect, it
 ' being contrary to his Oath and
 ' Office, by the Authority of this
 ' Act 'tis become the Duty of his
 ' Office to which he is sworn, any
 ' breach whereof is Indictable at
 ' common Law, and punishable
 ' by Fine and Imprisonment, and
 ' this may be too often necessary,
 ' in the last Case, I mean especially,
 ' the 5 *l.* penalty seeming too small
 ' for an Offence of such a Nature;
 ' but note, then he cannot or
 ' ought not to be punished both
 ' ways, for 'tis but one Offence,
 ' though when prosecuted as on
 ' this Law the Fine is certain, as at
 ' common Law 'tis undetermined.
 ' If a Constable uses not all Law-
 ' full means to prevent, suppress,
 ' and get Convicted such Meetings,
 ' as if he breaks not open a door

after request to have it opened in execution of a Warrant to levy the penalty by virtue of this Act, he is an Offender by this Clause.

Every Person whatsoever refusing or neglecting to give his Aid (being called thereto in execution of this Act) forfeits 5 *l.* especially, if such whom the Justice or Constable shall call in, do by private notices or otherwise, forewarn those Assembled to withdraw, for to prevent their being known, and by consequence their being Convicted.

If any Justice of the Peace, or chief Magistrate, shall wiltingly or wilfully omit the performance of his Duty in the execution of this Act, he shall forfeit 100 *l.* &c. This Clause is general, omit the performance of his Duty which is by all lawfull ways to get Information and notice of all such Meetings open or clandestine, that are held within his Limit,

' Limit, Precinct, or Jurisdiction,
 ' every thing which is prohibited
 ' by the Law, a Justice is bound
 ' as a good Officer, not only to
 ' punish it when discovered, but
 ' by all convenient means to inform
 ' himself, if such Offences are
 ' committed, and such Offences
 ' the more secret, the more dan-
 ' gerous; and therefore every Of-
 ' ficers Duty is to detect them, to
 ' be ready to receive Informations,
 ' to grant Warrants to Constables,
 ' to go in Person and endeavour to
 ' disperse them when met, or pre-
 ' vent their Meeting, to imprison
 ' those that oppose or resist them, to
 ' break open Doors, if shut against
 ' them, to secure such Offenders
 ' till know their Names and Pla-
 ' ces of abode in order to make
 ' Convictions, and of such Con-
 ' victions to make Records to
 ' grant Warrants on them for dis-
 ' tresses, such Records to certify
 ' to the next Sessions, and in short,

to do every thing which this Act Authorizes and requires them to do, and in the best and most convenient way that may be for the Attainment of the end of this Law, which was the suppression and prevention of Seditious Conventicles, a wilfull neglect of any thing this Act impowers such Justice of the Peace to do in order to that end, is an Offence within this Clause, and incurs the Penalty of 100 £.

Justice of Peace or chief Magistrate, &c. It must be intended for, or in Relation to Offences committed within their Respective Jurisdictions, for this Clause punishes nothing but the omission of what they were empowered, or inabled to do by the foregoing part of this Law, viz. to a Corporation Justice, for what happens within the Corporation, &c. & sic respective, although it be here said any Justice

Justice or chief Magistrate, yet any Justice of the Peace in any Liberty, City, or Corporation, is within this Clause as well as the chief Magistrate of such Liberty, City, or Corporation, for such Justices are bound by the former Clauses to disperse such Meetings, and make Conviction of them, and by consequence they are here intended.

Whittingly or wilfully omit, for the satisfying of those words, either his own knowledge or information is sufficient, I do not mean of the Law in the Case, for he is bound to take notice of this and all other Acts relating to his Office, and a pretence that he knew not he had power, or that 'twas his Duty, will be no excuse, but his own knowledge or information of the Fact; for if a Justice do not suppress a Conventicle, nor make a Conviction thereof, he is no Offender, pro-
vi

' vided he have no notice of it,
 ' but yet if a Justice know a Con-
 ' venticle to be held in the next
 ' House, and he do not his Duty,
 ' he is punishable by this Clause,
 ' though no Informer came and
 ' gave him notice of it; If any
 ' one come to inform him of a
 ' Conventicle that hath been held,
 ' he is bound to give the Informer
 ' his Oath, and 'tis no excuse for
 ' him that the Informer did not re-
 ' quire him to tender an Oath,
 ' for his coming is impliedly a Re-
 ' quest, it being in order to make
 ' a Conviction, and if he refuses
 ' or omits to give him his Oath,
 ' in order to the making a Con-
 ' viction, he is punishable, whe-
 ' ther a Conventicle were held yea
 ' or no, for being informed there
 ' was one, he is an Offender in not
 ' taking the Information upon
 ' Oath, and so was it resolved by
 ' the Court of *Kings-Bench*, *Mic.*
 ' 34 *Car. 2. Banca Regis*, on a mo-
 ' tion

tion in Arrest of Judgment, in
 an Action between *Smith qui
 tam, &c. vers. Langham of Nor-
 thamptonshire.*

The one moiety to the use
 of the Informer, &c. Al-
 though it be not expressly decla-
 red unto whom the other moi-
 ety shall be given, yet the King
 shall have it, for wheresoever a
 forfeiture or penalty is given
 by any Act of Parliament upon
 any Offence, it is intended to be
 to the King, his Heirs and Suc-
 cessours, though not particu-
 ly named, unless it be otherwise
 specially Ordered; Informer
 here is meant, not he that in-
 forms the Justice, but he that
 sues for the 100 l. and so informs
 the King's Court of such an Of-
 fence committed by such a
 Justice, for otherwise the Justice
 may go unpunished by agreeing
 with him that is Informer in the
 first sense, besides, if none but
 such

* such Informer might bring the
 * Action, there would in all pro-
 * bability be a failure of proof in
 * this Case, for none but those
 * who informed the Justice, are
 * for the most part capable of pro-
 * ving the Justice's refusal, or neg-
 * lect to do his Duty ; Although a
 * Moiety be here given to the In-
 * former, yet if none will sue for
 * the same, the whole may be sued
 * for at the King's Suit, for there
 * being a Forfeiture created by the
 * Act, and by the Law given to
 * the King, the not suing by any
 * Informer for his part, shall not
 * prejudice the King, the Moiety
 * going only to the Informer (*i.e.*)
 * to him that will and doth sue for
 * the same, if none will sue for it,
 * the whole is the King's, and before
 * any Information, Action or popular
 * Suit brought, he may pardon or
 * release the whole Penalty, and it
 * shall be a good Bar against all
 * men ; but what if an offending
 * Justice

' Justice within this Law should
 ' get a Friend to file an Informati-
 ' on against him by consent, to
 ' prevent and anticipate a real In-
 ' former, and such Prior Suit the
 ' Offender should plead to: the
 ' real Informer's Action to trice
 ' him thereof? I answer, that such
 ' Plaintiff may by virtue of 4 H. 7.
 ' cap. 20. aver the former Suit to
 ' be by Covin and Collusion, and
 ' such Covin he may in his repli-
 ' cation plead generally, and if the
 ' former Suit be found to be by
 ' Covin to evade the Act, and
 ' trice the present Plaintiff, the
 ' Defendant shall suffer two years
 ' Imprisonment, and such aver-
 ' ment the Plaintiff may make,
 ' though on the first Suit there
 ' were a Verdict for the Defen-
 ' dant for want of Evidence or the
 ' like, nay, though there were a
 ' recovery against him.

SECT. 12.

IF any Person be at any time
 sued for putting any of the
 Powers of this Act in Execu-
 tion, &c. Whether it be for In-
 forming, disturbing, searching,
 imprisoning, or distraining, &c.
 By the 7th and 21 Jac. all Just-
 ces of the Peace, Constables, and
 several other Officers have the
 privilege if sued for any thing
 done by Colour of their Office,
 they may plead the general issue,
 and give special matter for their
 excuse or justification in Evi-
 dence; but this Act gives the
 same advantage to all manner of
 Persons doing any Act in the
 Execution of this Statute, whe-
 ther they are Officers, or no,
 and the end is to prevent their
 being prejudiced by a tricity of
 pleading, and that the truth of
 their excuse may fairly and clear-
 ly

ly appear upon Evidence, any Informer or other Person going in Assistance of any Officer for the executing any power given by this Law, hath the same privilege and benefit.

Every such Defendant shall have his full treble costs, &c. (i.e.) the Costs given by the Jury in case of Trial, and the Costs likewise given by the Court, *de incremento* are to be trebled both, such Costs as the Defendant would have in case this Law were not, he is now to have treble, and in case the Plaintiff be non-suit, if without Evidence, or after Evidence he ought to have thrice so much Costs as he otherwise should have in such Case.

SECT. 13.

AND be it farther Enacted by Authority aforesaid, that this Act, and all Clauses therein contained, shall be construed most largely and beneficially for the suppressing of Conventicles,

H and

and for the Justification and Encourage-
 ment of all Persons to be employed in
 the execution thereof: ' This Clause shews
 ' the deep sense our Law-makers
 ' had of the pernicious effects of such
 ' unlawfull Meetings, which is em-
 ' phatically expressed in the pream-
 ' ble of this Act, where the reason
 ' of this Clause, and of the whole
 ' Act is declared, (*viz.*) For providing
 farther and more speedy remedies against
 the growing and dangerous practices of
 Seditious Sectaries, and other Disloyal
 Persons, who under the pretence of ten-
 der Consciences, have or may at their
 Meetings contrive Insurrections (as ex-
 ' perience hath shewn) and that
 ' experience hath been much more
 ' abundant of late days, and there-
 ' fore the Act continues as necessa-
 ' ry as ever, it being too well
 ' known that the Persons so pre-
 ' tending to a greater tenderness of
 ' Conscience than the rest of the
 ' Christian world, are no less dis-
 ' sected to the English Govern-
 ment,

' ment, than they avow themselves
 ' to be to the Church of *England* ;
 ' and it seems to be a base reflexion
 ' on the Wisdom and prudence of
 ' our Law-makers, that the prosecu-
 ' tion of this Law should be thought
 ' unnecessary in the same age where-
 ' in 'twas made, and the reason con-
 ' tinuing for which it was at first
 ' provided, *viz.* the danger of Muti-
 ' ny and Sediton, for the prevention
 ' and suppressing whereof there is no
 ' better means than the Execution of
 ' this Act, which (as this Clause is)
 ' ought to have the largest and most
 ' beneficial Construction imagina-
 ' ble (*i. e.*) such an equitable
 ' Construction, (although it be a
 ' Penal Law) as may best con-
 ' duce to the suppression of such
 ' Conventicles, though perhaps the
 ' thing be not expressly within the
 ' letter of the Law, yet it ought to
 ' be construed within the intent ;
 ' as for instance, suppose a cer-
 ' tain number of men should meet

and Assemble themselves together under the colour and pretence of exercising Religion, and there should be no formal Preaching and Teaching, but only an extempore Enthusiastical Prayer, yet the Prolocutor, or Speaker in such Assembly ought to be construed with the intent of the third Section of this Act, and incurr the Penalty of 20 £ being certainly within the intent, though not within the precise Letter of that Clause; the like of the Quakers Meetings, though they cannot properly be within the third Section, when 'tis as they call it a silent Meeting, yet even such Assembly of them seems to be within the first Section, and is a Conventicle within the meaning of this Act, for 'tis a Meeting under colour of the exercise of Religion, though none be exercised, they

pre

' pretending that they meet but
 ' of Conscience, and for such pur-
 ' pose, and 'tis plainly within the mis-
 ' chief, *viz.* The danger of con-
 ' triving Mutinies and Insur-
 ' rections at such Assemblies,
 ' and there's as much danger of
 ' that in such Congregations as
 ' any other; and by the design of
 ' this Clause such Construction
 ' ought to be made, as may most
 ' suppress the Mischief intended
 ' to be remedied by this Act; the
 ' like equitable Construction ought
 ' to be made for the encourage-
 ' ment and justification of the
 ' Officers of Justice, and others
 ' employed in the Execution of this
 ' Act, the meaning of which is,
 ' that by no strained interpreta-
 ' tion ought such Persons to be
 ' brought to damage for any thing
 ' done by colour of this Statute;
 ' and so this Clause requires all in-
 ' couragement to be given to such
 ' Persons by the King's Courts of
 Re-

' Record of *Westminster*, upon all
 ' occasions, and particularly by
 ' the next Clause, which is, that
 ' *No Record, Warrant, or Mit-*
 ' *timus* to be made by virtue of
 ' this Act or any Proceedings there-
 ' upon shall be reversed, abolished,
 ' or any way impeached for any
 ' default in Form, (*i. e.*) ' No Re-
 ' cord of Conviction, Warrant,
 ' for to disperse a Conventicle, or
 ' to levy the Penalty by distress,
 ' or *Mittimus* to Prison, shall, &c.
 ' This extends to all Courts, as to
 ' the Sessions, so to the *Kings-*
 ' *Bench*, or any other Court where
 ' such Record, &c. may be re-
 ' moved, or otherwise come in
 ' question upon any Action that
 ' may be brought against any Per-
 ' son for any thing done in pur-
 ' suance of this Act; although
 ' the Court of *Kings-Bench* may
 ' by *Certiorari* command such
 ' Records to be removed thither,
 ' &c. yet it is a good Act of their
 ' legal

' legal discretion to deny such *Cer-*
 ' *tiorari's* as of late years is done ;
 ' it being a Writ discretionary ,
 ' and not *ex debito Justitie* sent
 ' only to certify his Majesty in
 ' his said Court of the Procee-
 ' dings against such a Man, and
 ' the Justices below are the pro-
 ' per Judges of the Fact, and
 ' this Act seems to order the
 ' final determination of such Of-
 ' fences to the Justices particu-
 ' larly, for that this very Law
 ' gives an Appeal to the Sessi-
 ' ons where the Party hath his
 ' advantage for matter of Law
 ' as well as Fact ; but it may
 ' be questioned what shall be
 ' deemed a default in Form ? I
 ' confess that may be of some
 ' difficulty, but however by the
 ' virtue of this Clause, though
 ' it be by a Penal Law it ought
 ' to be helped by Intendments
 ' and Presumptions as much as
 ' any

any Plea in Bar, or any other
 pleading in a Civil Action, but
 to make the best Judgment
 in this Case, will be to com-
 pare this Clause with the
 Statute of Demurrs, viz. the
 27 Elizabeth, cap. 5. where
 the words are, any imper-
 fection, Defect, or want of
 Form, and the words here are,
 by reason of any default in
 Form, which are plainly all
 one; upon the former the
 rule is, whatsoever it is with-
 out which the right doth suf-
 ficiently appear to the Court,
 it is form within that Law,
 and so *è converso*, whatsoever
 is wanting, or imperfect, where-
 by the right appears not, is
 not remedied as Form within
 that Statute; so here whatsoe-
 ver it is without which the Of-
 fence doth sufficiently appear to
 the Court that's Form within our
 Law,

' Law, so if it appear a Conven-
 ' ticle were held against this Law,
 ' and the Parties meant to be Con-
 ' victed were present at it, if there
 ' be but sufficient exprest that it
 ' may appear upon the whole Re-
 ' cord the Party Convicted is an
 ' Offender against this Law, 'twill
 ' be well enough, and there needs
 ' no more, for which see above un-
 ' der the first Section, the descrip-
 ' tion of a Conventicle, which will
 ' direct you how such a Convicti-
 ' on ought to be made, as the Pre-
 ' sident hereafter given you is; And
 in Case any Person offending
 against this Law shall flee into
 any other County or Corpora-
 tion, &c. ' This Clause makes
 ' provision for the punishment of
 ' such Persons Convicted on this
 ' Act as are Strangers inhabiting,
 ' or Fugitives flying into any o-
 ' ther County or Corporation, that
 ' must be meant such Corporation
 ' where the Justice Convicting
 ' hath

any Plea in Bar, or any other pleading in a Civil Action, but to make the best Judgment in this Case, will be to compare this Clause with the Statute of Demurrs, viz. the 27 Elizabeth, cap. 5. where the words are, any imperfection . . . Defect . . .

IRREGULAR PAGINATION

and so *è converso*, whatsoever is wanting, or imperfect, whereby the right appears not, is not remedied as Form within that Statute; so here whatsoever it is without which the Offence doth sufficiently appear to the Court that's Form within our Law,

' Law, so if it appear a Conven-
 ' ticle were held against this Law,
 ' and the Parties meant to be Con-
 ' victed were present at it, if there
 ' be but sufficient exprest that it
 ' may appear upon the whole Re-
 ' cord the Party Convicted is an
 ' Offender against this Law, 'twill
 be well enough, and there needs
 no more, for which see above un-
 der the first Section, the descrip-
 tion of a Conventicle, which will
 shew you how such a Convicti-
 on ought to be made, as the Pre-
 scription hereafter given you is; And
 ' If any Person offending
 against this Law shall flee into
 any other County or Corpora-
 tion, &c. ' This Clause makes
 ' provision for the punishment of
 ' such Persons Convicted on this
 ' Act as are Strangers inhabiting,
 ' or Fugitives flying into any o-
 ' ther County or Corporation, that
 ' must be meant such Corporation
 ' where the Justice Convicting
 ' hath

any Plea in Bar, or any other
 pleading in a Civil Action, but
 to make the best Judgment
 in this Case, will be to com-
 pare this Clause with the
 Statute of Demurrs, viz. the
 27 Elizabeth, cap. 5. where
 the words are, any imper-
 fection, Defect, or want of
 Form, and the words here are,
 by reason of any default in
 Form, which are plainly all
 one; upon the former the
 rule is, whatsoever it is with-
 out which the right doth suf-
 ficiently appear to the Court,
 it is form within that Law,
 and so *è converso*, whatsoever
 is wanting, or imperfect, where-
 by the right appears not, is
 not remedied as Form within
 that Statute; so here whatso-
 ever it is without which the Of-
 fence doth sufficiently appear to
 the Court that's Form within our
 Law,

' Law, so if it appear a Conven-
 ' ticle were held against this Law,
 ' and the Parties meant to be Con-
 ' victed were present at it, if there
 ' be but sufficient exprest that it
 ' may appear upon the whole Re-
 ' cord the Party Convicted is an
 ' Offender against this Law, 'twill
 ' be well enough, and there needs
 ' no more, for which see above un-
 ' der the first Section, the descrip-
 ' tion of a Conventicle, which will
 ' direct you how such a Convicti-
 ' on ought to be made, as the Pre-
 ' sident hereafter given you is; And
 in Case any Person offending
 against this Law shall flee into
 any other County or Corpora-
 tion, &c. ' This Clause makes
 ' provision for the punishment of
 ' such Persons Convicted on this
 ' Act as are Strangers inhabiting,
 ' or Fugitives flying into any o-
 ' ther County or Corporation, that
 ' must be meant such Corporations
 ' where the Justice Convicting
 ' hath

' hath no Jurisdiction, so as the
 ' Penalty cannot be levied by his
 ' Warrant, and therefore this Para-
 ' graph provides that there may be
 ' a Certificate made of such Con-
 ' viction under the Hand and Seal
 ' of such Justice as made it, that
 ' must be meant a Certificate that
 ' there is such Conviction made,
 ' or a transcript thereof under the
 ' Justices Hand and Seal, not the
 ' very Record of Conviction it
 ' self, for that perhaps may be re-
 ' turned into the Sessions and di-
 ' vers other Persons inhabiting
 ' where the Offence was commit-
 ' ted may be perhaps Convicted
 ' by the same Record, and then
 ' twould be inconvenient to tran-
 ' smit that same; it may be to
 ' any Justice of the Peace of such
 ' other County or Corporation,
 ' and if such Offender be inhabi-
 ' ting, or fled into a Corporation
 ' where the County Justices have
 ' nothing to doe, there the Certifi-
 ' cate

'cate may be to any Justice of
 'that Corporation, as well as to
 'the chief Magistrate of the same,
 'notwithstanding the wilfull Er-
 'rour of some who in Corporations
 'would have none but the chief
 'Magistrate of that Corporation
 'as Mayor, &c. and no other
 'Justice of such place impowered
 'by this Law, whereas the whole
 'tenour of the foregoing Sections
 'shews the contrary; such Justice
 'is to levy the said Penalties as
 'fully as the Justice Convicting
 'might, &c. (*i. e.*) by Warrant
 'for distress and Sale of the Of-
 'fenders Goods and Chartels, but
 'it may be queried what shall
 'such Foreign Justice doe with
 'Money so levied? I think this
 'somewhat plain that he ought to
 'return it to the Justice that did
 'Convict, and he to the Quarter
 'Sessions for the place where the
 'Offence was committed, and the
 'Foreign Justice must not return
 'it

' it to the Quarter Sessions of his
 ' own County, and my Reasons
 ' are, First, Because the Convicti-
 ' ons are not to be returned thi-
 ' ther. Secondly, A third part of
 ' such Penalties is to go to the Poor
 ' of the Parish where the Offence
 ' was committed. Thirdly, The
 ' third is to go to the Informer or
 ' Informers, or such other Person,
 ' &c. which distribution the Fo-
 ' reign Sessions cannot convenient-
 ' ly make; but then it may be
 ' queried what will become of the
 ' Parties Appeal, how shall that be
 ' made? I answer, if he has the
 ' benefit of any, as I think he has
 ' notwithstanding, it must be to
 ' the Quarter Sessions of the place
 ' where the Offence was commit-
 ' ted, for the Statute expressly re-
 ' quires it should be delivered to
 ' the Justice Convicting, he is to
 ' take Recognizance for the Pro-
 ' secution thereof with effect, and
 ' this with the Conviction he is
 ' to

' to return into the Sessions; but
 ' then it may be again queried
 ' how such Offender shall know
 ' who is the Justice Convicting,
 ' for to him he must deliver his
 ' Appeal in writing, and that
 ' within a week after the Penalty
 ' paid or levied? I answer, that
 ' will be known by the Warrant
 ' of the Foreign Justice upon
 ' which the levy is made, for his
 ' Warrant either mentions a Con-
 ' viction by himself, or by ano-
 ' ther Justice of another County
 ' or Corporation which will inform
 ' him, but he must take this Note
 ' with him always, that his Ap-
 ' peal must be delivered in Per-
 ' son, for he himself is to enter in-
 ' to a Recognizance to Prosecute
 ' it, and this is to be done at the
 ' same time before the Justice Con-
 ' victing, the rest of this Para-
 ' graph is plain enough.

S E C T. 14.

PROVIDED also that no Person
 shall be punished for any
 Offence against this Act, un-
 less, &c. Prosecuted within
 three months, 'tis not necessary
 that the Penalties be actually le-
 vied within three months, nor
 that a Conviction be made of
 Record, but to fulfill the sense of
 this Clause, I think it sufficient,
 if Information be given to some
 Justice of a Conventicle already
 held in order to the making a
 Conviction of it, this being
 within three months, is enough,
 for such Information being in
 order to a Conviction, is a Prose-
 cution within the meaning of
 this Clause, it is not said Con-
 victed, but Prosecuted, and such
 Information is a commencement
 of the Suit, this is the *primum*
movens towards a Conviction af-
 ter

the Offence committed ; as in
 civil Actions which are limited to
 be brought within such a time,
 the beginning of a Suit is the
 suing an Original, or other first
 Writ as *Latitat*, &c. If within
 the time limited, is well enough,
 though the Suit be not effectually
 Prosecuted, though there be no
 Judgment in a long while after,
 so in Capital Criminal Causes,
 which must be Prosecuted with-
 in a certain time, by the or-
 der of any particular Law, if
 an Indictment be found within
 the certain time, if the first Act
 of the Suit be begun, 'tis enough,
 though the Party be not Con-
 victed within twice the time, so
 here the same rule will govern,
 no Person shall, this extends to
 an offending Justice or Constable,
 as well as to the Conventicles ;
 yet if such Justice, Constable, or
 other Officer neglects his Duty
 against the Tenour of this Act,
 be

' be Indicted, or otherwise sued
 ' within three Months after such
 ' neglect or refusal to doe their Du-
 ' ty, it is a sufficient Prosecution
 ' within the three months, al-
 ' though not Convicted within that
 ' time, as I said before; and that
 ' no Person who is punished by
 ' this Statute, shall be punished
 ' for the same Offence by any o-
 ' ther Law; For the same Offence,
 ' notwithstanding this, a Conven-
 ' tier may be punished for his ab-
 ' sence from Church, because such
 ' Meeting and his absence are se-
 ' veral Offences; **Shall be puni-**
 ' **shed,** this doth not hinder but
 ' that such Offender may be Pro-
 ' secuted and punished, as at the
 ' common Law for any thing pro-
 ' hibited by this Statute, which is
 ' an Offence at the common Law,
 ' I say he may be Prosecuted as
 ' at common Law, if he hath
 ' been actually punished for the
 ' very same Offence by virtue of
 ' this

this Law, but if he hath been once punished by this Law, if sued as at common Law, or on another Statute he may plead his Conviction and punishment on this thereto, but this he cannot do till the Penalty be either levied or paid, for till then he is not punished; however, as I said, any Offender within this Law may be sued as at common Law, as a Conventicler may for a Riot, Rout, or unlawfull Assembly, and punished for it by Fine or Imprisonment, but he shall not be punished both ways, and that's the sole meaning of this Paragraph, viz. That such Person should not be double punished for one and the same Offence; but yet again if any Preacher, Teacher, or other Person should at such Meeting speak Seditious or Treasonable words, resist the Magistrate coming to disperse them, or give opprobrious Language

I

* guage to the Justice or other
 * Officer in the Execution of this
 * Act, he may be Indicted and
 * punished for any such Offence,
 * and by this Act too.

SECT. 15.

PRobided also that every
 Alderman of London, &c.
 * Had this Clause not been added,
 * it would be no great Question
 * but that they were included in
 * the meaning of this Act, for
 * they are the chief Magistrates
 * and Justices of the Place, this
 * Proviso therefore seems added
 * for perspicuity and preven-
 * tion of all scruple, and for to em-
 * power such of the Aldermen un-
 * der the Chair, as are not Justices
 * of the Peace; for it will not be
 * doubted, but the Aldermen of
 * Exeter and Bristol, and other such
 * like Cities and Counties as are
 * Justices of the Peace, are bound by
 * this

' this Act to prevent, disperse, and
 ' suppress such Meetings, otherwise
 ' the Act would be of least force
 ' where 'tis most needfull, viz.
 ' in those Populous Cities where
 ' the most idle People likeliest to
 ' be seduced, whereas in other
 ' Counties the common People are
 ' generally employed in hard la-
 ' bour either about Husbandry or
 ' other painfull Callings, and by
 ' consequence not so liable to se-
 ' duction.

' Provided that if the Person
 ' Offending and Convicted be a
 ' Feme-Covert, co-habiting, &c.
 ' In this case Co-habitation as a
 ' Wife, is a sufficient Evidence her
 ' being so, and the Justice need
 ' look no farther, for the Husband's
 ' Goods and Chattels are liable.
 ' Co-habiting (*i. e.*) for the most
 ' part, or generally, for though
 ' she be in Countrey House about
 ' this Town, and her Husband in

London, yet his Goods will be
 liable ; if it had been otherwise,
 it would have said then Co-habi-
 ting, or then Personally residing,
 so if the Husband be upon any
 Occasion from home, for Co-
 habitation here is used only in
 opposition to a separate living
 by sentence of Spiritual Court,
 or by agreement of themselves,
 not being apart now and then, or
 at certain Seasons of the year, or
 on an occasional Journey, for in
 all such Cases the Husband is
 still supposed to have the Com-
 mand over his Wife, so far as to
 restrain her from breaking this
 Law, and in case she offends, 'tis
 to be supposed by his consent or
 connivance, and therefore this
 Law lays the Punishment upon
 his shoulders.

- SECT. 16.

PROBIDED also that no Peer of this Realm shall be Attached or Imprisoned by force of this Act, &c. Peer here seems to include all such as by Law are Privileged from Personal Arrests in Civil Actions, Attached or Imprisoned, is in their Bodies, for their Goods may be distrained upon a Conviction for such a Meeting as well as any Commoners, this is merely designed to privilege their Persons from all trouble, who are *Consanguinei* & *Comites Regis*, and always intended to be busied in *arduis negotiis regni*, in the Service of his most Sacred Majesty.

SECT. 17.

Provided also that this Act, nor any thing therein contained, shall extend to invade or abate his Majesty's Supremacy in Ecclesiastical Affairs, but that his Majesty, his Heirs and Successors may from time to time, and at all times hereafter exercise and enjoy all Powers and Authority in Ecclesiastical Affairs as fully and as amply as any of his Predecessors have or might have done the same, any thing in this Act notwithstanding. This Clause is an ample affirmance of the King's Prerogative in Ecclesiastical Affairs notwithstanding this Act, which I shall not presume here to discuss, especially considering that it will no way be instructive for the better Execution of the Powers

' Powers and Provisions of this
 ' Act, which was the only end of
 ' our great Judge in making these
 ' Observations, and is the end of
 ' their present publication, and
 ' therefore I shall here conclude
 ' with this one Remark, *viz.* That
 ' the time of making this Act is mi-
 ' staken in the Print, which may be
 ' of use to observe in case any Action
 ' be brought against any Justice of
 ' the Peace or other Person for the
 ' 100 *l.* Penalty for the neglect of
 ' his Duty, 'tis there said to be at
 ' a Parliament continued by Pro-
 ' rogation to the 14th of *Febr.*
 ' 16th from whence it is continued
 ' by Adjournment made the 11th
 ' of *April*, 1670. to the 24th day
 ' of *October* following, which
 ' makes a kind of discontinuance,
 ' for it says the Adjournment made
 ' the 11th of *April*, from the 14th
 ' of *Feb.* before, 'tis safest there-
 ' fore to omit the Adjournments
 ' and take no notice of them, but

only at a Parliament begun at
Westminster the 8th of *May*, *An.*
Dom. 1661. in the 13th year of,
Ec. and there continued by several
 Prorogations to the 14th of
Febr. 16th and no more.

Midd.

Midd' **M**emorandum, Quod de-
 cimo die Novembris,
 anno Regni Domini nostri Serenif-
 simi Caroli Secundi Dei gratia An-
 gliae, Scotiae, Franciae & Hiberniae,
 Regis fidei defensoris, &c. tricesimo
 quinto venit J.S. de in Com'
 Midd' Yeoman, coram nobis

ad tunc & ad
 huc duobus Justiciar' dicti Domini
 Regis ad pacem suam pro com' praed'
 conservand' assignat' apud S. in com'
 praed' Et dedit nobis intelligi &
 informari de quodam Conventiculo
 & illicit' assemblation' sub colore ex-
 colendi Religionem in alio modo
 quam secund' liturgiam & usum Ec-
 clesiae Anglicanae ante tunc tempus
 tunc

' gent' contraformam statuti Et super
 ' inde Examinatione debitâ adtunc
 ' & ibid' habitâ tam per Sacrament'
 ' præd' J.S. & A.B. de, &c. & C.D.
 ' de, &c. coram nobis in eâ parte le-
 ' gitimo modo præstit' quam per noto-
 ' riam Evidentiam facti nobis Justi-
 ' ciariis præd' manifeste & plene ap-
 ' paret quod M. N. de, &c. L. M.
 ' de, &c. cum multis alijs, in toto
 ' se attingent' ad numerum viginti
 ' personarum præter familiam præd'
 ' M. N. & quilibet eorum die domi-
 ' nicâ, viz. Primo die hujus instanti
 ' Novembris, ultra ætatem sexdecim
 ' annor' & subdit' dict' Domini Re-
 ' gis nunc existentes prædicto prima
 ' die hujus Novembris in simul as-
 ' semblaverunt & præsentas fuerunt,
 ' & quilibet eorum præsens fuit in
 ' domo mansionali ipsius M.N. in Pa-
 ' rochia de in Com' præd' ad
 ' Conventiculum sub pretextu Exer-
 ' citationis Religionis in alio modo
 ' quam allocatur per Liturgiam aut
 ' usum

' usum Ecclesiæ Anglicanæ, adtuto
 ' & ibid' tent' contra formam Stat.
 ' tut' ad præveniendā & suppri-
 ' menda seditiosa Conventicula ny-
 ' per edit' & provis. Ac etiam
 ' quod præd' M. N. tempore & loco
 ' ultime supradictis scienter & vo-
 ' luntarie permisit Conventiculum
 ' præd' fore tenend' in domo mansio-
 ' nali sua præd' etiam contra for-
 ' mam Statut' præd', quodque præd'
 ' O. P. tempore & loco ultime su-
 ' pradict' assumpsit super se docere in
 ' Conventiculo præd' & in eodem ad-
 ' tunc & ibid. dedit contra formam
 ' Statut' præd. Record' quarum qui-
 ' dem separat' offensar' nos

' Justiciarji præd' quibus (secund'
 ' formam & effect' Stat' præd') se-
 ' parates offens' præd' sic ut prefer-
 ' tur fore commiss. sufficienter appa-
 ' rat per præsentēs sub manibus &
 ' sigillis nostris hocce instanti deci-
 ' mo die Novembris anno tricesimo
 ' quinta

' quinto supradict' apud S. præd' in
 ' Com' præd' fecimus, prædictique
 ' M. N. L. M. O. P. &c. de sepa-
 ' ralibus offensis suis præd' superius
 ' mentionat' virtute Statut' præd'
 ' sunt convicti & quilibet eorum in-
 ' de separaliter convictus est. Et
 ' nos præfati Justiciarii superinde
 ' virtute Statut' præd' die anno &
 ' loco ultime supradictis in & super
 ' præd' L. M. &c. Sic ut præfertur
 ' ad Conventiculum præd' præsent'
 ' existent' proseparalibus offensis su-
 ' is finem separaliter
 ' imposuimus, prædictusque O. P. pro
 ' offens. sua præd' in docendo ad
 ' Conventiculum præd' forisfecit sum-
 ' mam vigint' librar' vigore Statut'
 ' præd' prædictique M. N. pro of-
 ' fens. ejus præd' in permissione Con-
 ' venticuli præd' fore tenend' in do-
 ' mo sua mansionali præd' forisfecit
 ' summam vigint' librar' vigore ejus-
 ' dem Statut'. In quorum omnium
 ' præmissorum testimonium Nos præ-
 ' fat'

'fat' Justiciarii die anno & loco
'primo superius mentionat' manus &
'figillum nostrum, presentibus appo-
'suimus.

ERRATA.

P Ag. 48. Lin. 24. r. imposed. P. 54. l. 15. r.
in respect of poverty. P. 86. l. 24. for get, r.
take. p. 87. l. 7. r. himself and ready to re-
ceive notice and information.

FINIS.



MVSEVM

BRITANNICVM

